



An Overview of Florida's Government-in-the-Sunshine Law for County Commissions

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June 24, 2025

Sunshine Law Overview

The public's right of access to governmental meetings is enshrined in Florida's constitution in Art. I, s. 24(b), Fla. Const.

Florida's Open Meetings Law, commonly referred to as the "Sunshine Law" is primarily contained in Chapter 286 of the Florida Statutes.

Purpose of the Sunshine Law

- The purpose of the Sunshine Law is "**to prevent at non-public meetings the crystallization of secret decisions** to a point just short of ceremonial acceptance." *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So.2d 857, 860 (Fla. 3d DCA 1994) (quoting *Town of Palm Beach v. Gradison*, 296 So.2d 473 (Fla.1974)).
- The Sunshine Law also affords to the public a right of access to governmental meetings on the state and local levels.

Overview

s. 286.011(1), F.S.

(1) **All meetings** of any board or commission of **any state agency or authority** or of any agency or authority of **any county, municipal corporation, or political subdivision**, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which **official acts** are to be taken are **declared to be public meetings open to the public** at all times, and **no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting**. The board or commission must provide **reasonable notice** of all such meetings.

Overview

s. 286.011(2), F.S.

(2) The **minutes** of a meeting of any such board or commission of any such state agency or authority shall be **promptly recorded**, and such records shall be **open to public inspection**. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

REQUIREMENTS OF THE SUNSHINE LAW

The Government in the Sunshine Law, s. 286.011, F.S., requires that:

- 1) Meetings of boards or commissions must be open to the public;
- 2) Reasonable notice of such meetings must be given; *and*
- 3) Minutes of the meeting must promptly recorded and open to the public for inspection.

Let's PARSE THESE TERMS!

What is a “meeting” of a public board or commission?

- Any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission. Quorum not required for Sunshine Law to apply.
- A single member of a board who has been delegated the authority to act (i.e. take official action) on behalf of the board may be subject to the Sunshine Law.
- Written communications (text messages, emails, Facebook posts, ect.) and telephone conversations between members of the same board.
- Meetings of advisory boards and staff committees that have been delegated decision-making authority by a public official or board are subject to the Sunshine Law.

What is a “meeting” of a public board or commission?

- The Sunshine law applies to all discussions or deliberations as well as the formal action taken by a board or commission.
- For example, the Sunshine Law has been implicated concerning gatherings of board members including:
 - Luncheon meetings
 - Social gatherings
 - Field inspection trips
 - Bus tours
 - Conference sessions or workshop meetings amongst board members

Electronic Communications Amongst Members of the Same Board

- Sunshine Law requires boards to meet in public.
- Board members may not take action on or engage in private discussions of board business via written correspondence, text messages, Facebook messages, or any form of electronic communication. *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018).
- **Example**-AGO 09-19 wherein the Attny. General advised members of a city board that they may not engage on the city's Facebook page in an exchange or discussion of matters that could foreseeably come before the board for official action.

Board Member Meetings with Staff

- Ordinarily, the Sunshine Law does not prohibit an individual board member from discussing public business or information with agency staff or other non-board members. *See Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010).
- However, board members cannot use a third party to facilitate an otherwise unlawful communication. Thus, staff cannot act as a conduit of information amongst board members.

CASE STUDY

Nick Niceguy is a County Commissioner who likes to hold a meeting with county staff the day prior to each commission meeting. At one such meeting he asks staff to brief him on an issue coming before the board. During the meeting Nick asks staff whether they have met with other commissioners and how they intend to vote on the measure. He then asks the County Manager to convey his intention to vote affirmatively on the measure to another board member. **What Sunshine Law issues does Nick's conduct raise, if any?**

Case Study Analysis

- Courts have found that ordinarily informational briefings held by agency staff with individual members of a board do not violate the Sunshine Law. *See Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010) and AGO 81-42.
- However, board members should not poll other board members regarding their intended votes either individually or through agency staff. *See also Blackford v. Sch. Bd.*, 375 So. 2d 578 (Fla. 5th DCA 1979). *And see* AGO 96-35, AGO 89-23, and AGO 75-59.
- Thus, the County Manager may meet individually with board members to discuss public business, but the manager cannot “act as a liaison for board members by circulating information and thoughts of individual councilmembers to the rest of the board.” AGO 75-59.

Requirements of the Sunshine Law: Open to the Public

- All meetings must be open to allow the public to attend and observe.
- Sec. 286.011(6), F.S., prohibits public boards or agencies from holding public meetings at any facility or location where discrimination occurs “or which operates in such a manner as to **unreasonably restrict public access to such a facility.**”
- Public agencies cannot hold meetings at locations where the public or the press have limited access or where the requirements of access have a chilling effect on the public’s willingness to attend. *See e.g., AGO 96-55, but see AGO 05-13.*

Requirements of the Sunshine Law:

Reasonable Notice

- Sec. 286.011(1), F.S., provides that boards or commissions subject to the Sunshine Law must provide “reasonable notice” of all meetings.
- “Reasonable notice” is not defined within the Sunshine Law but notice must be reasonable under the circumstances.
- Notice should contain the time, place, and agenda (or statement re subject matter) at least 72 hours but ideally 7 days prior to meeting.
- Notice requirements apply to meetings held virtually as well as in person meetings.

Attorney General Guidelines: Notice

1. Notice should contain the time and place of the meeting and, if available, an agenda, or if no agenda is available, a statement of the general subject matter to be considered.
2. Notice should be prominently displayed by the agency in its offices and on the agency's website.
3. Except in the case of emergency or special meetings, notice should be provided at least 7 days prior to the meeting. Emergency sessions should be afforded the most appropriate and effective notice under the circumstances.
4. Special meetings—no less than 24 and preferably at least 72 hours notice.
5. The use of press releases, faxes, e-mails, and/or phone calls to the local news media is highly effective in providing notice of upcoming meetings.

Requirements of the Sunshine Law: Minutes

- Sec. 286.011(2), F.S., requires that the minutes of public meetings must be **promptly recorded and open to public inspection**.
- Minutes can consist of a brief summary of the events of the meeting and need not be a verbatim transcript of the proceedings.
See AGO 82-47.
- Although the Sunshine Law does not require a board to tape meetings, other statutes may so require.

APPLICATION OF THE SUNSHINE LAW



Governmental Entities Subject to the Sunshine Law

- The Sunshine Law applies to “any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision,” unless exempted by law or via the Constitution. s. 286.011(1), F.S.
- Applicable to both elected and appointed collegial bodies on the State and local levels of government.
- Advisory boards or committees even when their recommendations are not binding upon the board or commission that created them.
- Any public board or committee possessing delegated decision-making authority.

Application of the Sunshine Law: Private Entities Delegated Public Functions

- Private corporations are not subject to the Sunshine Law merely because they do business with public agencies or receive public funds.
- Sunshine Law can apply to the meetings of private entities created by law or which have been delegated the authority to perform an agency's public purpose. *Memorial Hospital West Volusia, Inc. v. News-Journal Corporation*, 729 So. 2d 373, 382 (Fla. 1999).
- **Example:** Nonprofit corporations charged with overseeing or fulfilling public functions. AGO 00-03 and AGO 98-49.

Application of the Sunshine Law: Advisory Boards

- The Sunshine Law applies to advisory boards created by public agencies, public officials, or by ordinance or resolution.
 - Applies even if the authority of the advisory board is limited in scope and their recommendations are not binding on the entities that created them.
 - **Key Test:** Whether the advisory body or committee has been delegated decision-making authority as opposed to mere “information or fact-finding authority.”

Staff Meetings and Staff Committees

- As the Sunshine Law applies primarily to meetings of public elected or appointed boards—it does not normally apply to staff meetings or staff committees.
- Meetings of a staff committee comprised of agency staff tasked with fact finding and advising the decision maker—are typically not subject to the Sunshine Law. *Knox v. District School Board of Brevard*, 821 So.2d 311, 315 (Fla. 5th DCA 2002).
- However, nothing prevents the agency from allowing the public to attend such meetings.

Application of the Sunshine Law: Staff Committee Meetings

- Generally, staff meetings are NOT subject to the Sunshine Law if they are purely informational in nature.
 - **Example:** Staff committee comprised solely of County employees meets to engage in pure fact finding and then inform the County Manager and Commission regarding information gathered—the meetings of the staff committee are not required to be open and noticed nor minutes taken.
- BUT staff committees may be subject to the Sunshine Law IF the committee has been delegated decision making authority.
 - Scrutiny of the acts performed by the committee, not the composition of its members is required.
 - Select, evaluate, or rank—applicants, candidates, bids, or proposals.

Examples of Staff Committees Found Subject to Sunshine Law

- University staff committee formed to assist college purchasing director in evaluating contract proposals. *Silver Express Co. v. District Board of Lower Tribunal Trustees*, 691 So. 2d 1099 (Fla. 3d DCA 1997)
- FDOT committee comprised of agency staff and officials having authority to screen and evaluate potential road corridors and alignments for expansion. *Roscow v. Abreu*, No. 03-CA-1833 (Fla. 2d Cir. Ct. August 6, 2004)
- City Development Review committee comprised of city staff and officials formed to review and approve development applications later submitted to planning and zoning board which makes recommendations to city commission. AGO 05-06
- Textbook committee established by a school superintendent to evaluate textbooks using a “quantitative rubric for evaluation” as provided in a school board policy were subject to the Sunshine Law. *Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021)

CASE STUDY:

Selection Committee

Would meetings of a public advisory committee, consisting of agency staff, created to seek out candidates, receive applications, screen and rank applicants for positions, and then submit recommendations to the ultimate decision maker—be subject to the Sunshine Law?

Case Study Analysis

- Meetings of a public advisory committee possessing blended fact-finding and delegated decision-making authority to screen and rank applicants (i.e., accept some and reject others) is implicative of the Sunshine Law.
 - *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983)
 - AGO 94-21
 - *But see, Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985)

Community Forums Sponsored by Private Organizations

- Sunshine Law does not apply to candidates unless they are an incumbent seeking re-election. *See* AGO 92-05.
- Generally speaking, the Attorney General has concluded that the Sunshine Law does not apply to meet the candidate forums or events sponsored by private entities where candidates for public office, including incumbent candidates, discuss their political philosophies and beliefs, so long as members of the same board do not discuss foreseeable action amongst themselves. AGO 92-05 and AGO 94-62.
- However, caution should be exercised as such private events cannot be used to circumvent the Sunshine Law!

CAUTION re Community Events!

- Inf. Op. to David Jove, Jan. 12, 2009: Hallandale Beach City Attorney inquired about whether the Sunshine Law applied to a forum hosted by a city council member in which other council members were invited to attend and discuss matters which may foreseeably come before the city commission.
- Attorney General focused on the fact that the event was being held by a city commission member and found that the Sunshine Law did apply.
- All requirements of s. 286.011, F.S., were required to be satisfied including notice provided by the city council.
- *See also City of Bradenton Beach v. Metz*, No. 2017 CA 003581 (Fla. 12th Cir. Ct. August 9, 2019).

Additional Warning!

Seriously, do not be a conduit.

- Private events or forums should not be used to evade the Sunshine Law.
- Example: *State v. Foster*, 12 F.L.W.Supp. 1194a (Fla. Broward Co. Ct. September 26, 2005).
 - Involved a private breakfast event attended by several members of the City Commission as well as the Sheriff.
 - City Commission members individually asked questions of Sheriff in each other's presence.
 - Court found that the Sunshine Law would apply to such a meeting and the Sheriff was essentially acting as a “**common facilitator**” of information amongst members of the same board.

PUBLIC ACCESS v. PUBLIC PARTICIPATION



Public Access vs. Public Participation

Prior to 2013 the Sunshine Law, s. 286.011, F.S., provided only a right of access to the public to attend public meetings.

Adoption of s. 286.0114(2), F.S., mandated that “[m]embers of the public shall be given a **reasonable opportunity to be heard** on a proposition before a board or commission.”

Reasonable Opportunity to be Heard

- Sec. 286.0114(2), F.S., further provides:

Members of the public shall be given a **reasonable opportunity to be heard** on a proposition before a board or commission. The opportunity to be heard **need not occur at the same meeting at which the board or commission takes official action on the proposition** if the opportunity occurs at a meeting that is **during the decisionmaking process** and is within reasonable proximity in time **before** the meeting at which the board or commission takes the **official action**. This section **does not prohibit a board or commission from maintaining orderly conduct or proper decorum** in a public meeting.

Limitations on Public Participation During Board Meetings

- Sec. 286.0114(2), F.S., permits boards to adopt reasonable rules and policies to ensure the “**orderly conduct or proper decorum**” of public meetings.
- Sec. 286.0114(4), F.S., provides that boards may adopt rules or policies:
 - Limiting the amount of time given to address the board;
 - Adopt procedures requiring a representative of a group to address the board rather than each member thereof;
 - Adopt procedures and forms informing the board of the identity of speaker and topic upon which they wish to speak;
 - Designate a specific period of time for public comment.

WARNING:

Restrictions Cannot Be Unreasonable

- Governmental entities cannot ban or otherwise unreasonably restrict public participation under the Sunshine Law.
- Sunshine law does not allow boards to ban nondisruptive video or tape recording or photography at public meetings. *See* AGO 91-28 and AGO 77-122.
- Public meetings subject to the Sunshine Law must be “open to the public” meaning all persons who choose to attend.
- **Be reasonable!**

Exemptions to the Sunshine Law

- Only the Legislature is authorized to adopt laws creating exemptions to the Sunshine Law.
- Requires two-thirds vote of Legislature.
 - Must state with specificity the public necessity justifying the exemption.
 - Exemptions are narrowly construed.
- Examples of Statutorily Exempt Proceedings:
 - Certain proceedings of the Commission on Ethics concerning ethics complaints or referrals at a certain stage. s. 112.324(2), F.S.
 - “Shade meetings” pending litigation s. 286.011(8), F.S.
 - Vendor negotiations. s. 286.0113(2), F.S.

Penalties & Remedies

Criminal Penalties

Noncriminal Penalties

Civil Action

Suspension or Removal from Office

Cure meetings

Ethics, Public Records and Sunshine Laws

• **SCAN** •
FOR EDUCATION CREDITS



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Thank You!



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