



**Florida's
Open Meetings Law
Article I, s. 24(b), Fla. Con.
Section 286.011, F.S.**



**FLORIDA'S CONSTITUTION
Access to Government Meetings**

Article I, section 24(b)

“All meetings of any collegial body of the executive branch of state government or of any . . . county, municipality, school district, or special district, at which official acts are to be taken or at which public business . . . is to be transacted or discussed, shall be open and noticed to the public . . .”



FLORIDA'S SUNSHINE LAW Section 286.011, F.S.

Three Requirements

1. Meetings of public agencies must be open to the public;
2. Reasonable notice of such meetings must be given; and
3. Minutes must be taken.



Who is Covered by the Sunshine Law

- All public agencies in the state: state agencies, local governments, school boards, and special districts.
- Advisory boards and committees.
- Private companies doing business on behalf of a government agency.
- One person acting on behalf of a board or commission.
- Members- and Officers-elect.



Who is Covered by the Sunshine Law

Advisory boards or committees created pursuant to law or ordinance or otherwise established by public agencies are subject to the Sunshine Law even though their recommendations are not binding. *Town of Palm Beach v. Gradison*, 296 So.2d 473 (Fla. 1974)

Staff meetings are not generally subject to the Sunshine Law. *School Board of Duval County v. Florida Publishing Company*, 670 So.2d 99, 101 (Fla. 1st DCA 1996)

But staff should refrain from polling board members on specific issues which will come before the board for consideration. AGO 75-59



What is a Meeting

Generally, the Sunshine Law applies to *any* gathering, whether formal or informal, of two or more members of the same board or commission to discuss some issue on which foreseeable action will be taken by the board or commission. *Hough v. Stembridge*, 278 So.2d 288 (Fla. 3d DCA 1973)



What is a Meeting

Evasive Devices

- The Sunshine Law applies, generally, to deliberations and discussions between two or more members of the board on any issue on which foreseeable action might be taken, and the use of a telephone to conduct such discussions does not remove the conversations from the requirements of the law. *State v. Childers*, No. 02-21939-MMC; 02-21940-MMB (Escambia Co. Ct. June 5, 2003), *per curiam aff'd.*, 886 So.2d 229 (1st DCA 2004)
- Similarly, members of a public board can't use computers to conduct private discussions among themselves about board business. AGO 89-39



Open Meeting

Means of Communication Subject to the Sunshine law

- May occur through telephone or e-mail.
- May occur through exchanges during social events, football games and neighborhood barbeques, shopping excursions, etc.
- May occur through third parties.



Who is Covered by the Sunshine Law

The sunshine law applies to meetings between a board member and an individual who is *not* a board member when that individual is being used as a liaison between, or to conduct a *de facto* meeting of, board members. AGO 74-47

A single member of a board or commission will be subject to the sunshine law *if* that one person has been delegated the authority to act on behalf of the entire board or commission. AGOs 74-294; 75-41; and 10-15



What is a “meeting”

Who is Covered by the Sunshine Law?

Members-elect of boards or commissions are subject to the sunshine law at the point election results are certified. *Hough v. Stembridge*, 287 So.2d 288 (Fla. 3d DCA 1973) and Section 286.011, F.S.

The sunshine law applies to transition teams appointed by a member- or officer-elect for the purpose of making recommendations. Inf. Op to Lamar, August 2, 1993



When the Sunshine Law does *not* apply

When a *committee* has been established for the sole purpose of fact-finding – gathering information and reporting the facts – the Sunshine Law will *not* apply. *Cape Publications, Inc. v. City of Palm Bay*, 473 So.2d 222 (Fla. 5th DCA 1985)

However, the “fact-finding exception” applies *only* to advisory committees and *not* to boards with “ultimate decision-making” authority. *Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 5th DCA 2008)



When the Sunshine Law does *not* apply

Community or political forums sponsored by a private organization are *not* subject to the sunshine law even though two or more members of the same board or commission are in attendance and discussing issues that may come before them in their official capacity. AGOs 92-05 and 94-62

The sunshine law will apply, however, if the members of the board or commission discuss such issues among themselves.



When the Sunshine Law does *not* apply

The Sunshine Law does *not* apply to social gatherings attended by two or more members of the same board or commission provided that public business is not discussed. AGO 92-79



Procedural Requirements Notice

Staff provides notice to the public Consistent with the Statutory requirements and will schedule meetings in accordance therewith

The purpose of the notice requirement is to apprise the public of the pendency of matters that might affect their rights, afford them the opportunity to appear and present their views, and afford them a reasonable time to make an appearance if they wish. *Rhea v. City of Gainesville*, 574 So. 2d 221, 222 (Fla. 1st DCA 1991)



Procedural Requirements Public Participation

The Florida Supreme Court has said that government boards and commissions should not be allowed to deprive the public of the “inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made.” *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 699 (Fla. 1969)



Procedural Requirements Public Participation

However, the courts have not ruled on the extent to which the sunshine law *requires* a governmental entity to permit the public to speak at public meetings.

Florida courts have found that although the public has a right to attend public meetings, the right to speak is not absolute.

- *Keesler v. Comm. Maritime Park Assoc., Inc.*, 32 So. 3d 659 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1289 (2010)
- *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1288 (2010) [Public Records Case]
- *Kennedy v. St. Johns River Water Management District*, No. 2009-0441-CA (Fla. 7th Cir. Ct. September 27, 2010), *per curiam affirmed*, No. 5D10-3656 (Fla. 5th DCA October 25, 2011)



Procedural Requirements Public Participation

The 2013 Legislature, however, passed CS/SB 50, (Currently FS § 286.0411) requiring boards and commissions to provide the public with a “reasonable opportunity to be heard” on propositions before the board or commission. The right to speak doesn’t have to be at the same meeting at which the proposition will be considered, but it must occur within reasonable proximity to the meeting at which official action will be taken.



Procedural Requirements Public Participation (Cont.)

The use of non-disruptive recording devices, whether cameras or tape recorders, cannot be banned. *Pinellas County School Board v. Suncam, Inc.* 829 So. 2d 989 (Fla. 2d DCA 2002)



Procedural Requirements Inaudible Discussions

A violation of the sunshine law may occur if board members discuss board business in a manner not generally audible to the public attending the meeting. *Although such a meeting is not clandestine, it nonetheless violates the letter and spirit of the law.* *Rackleff v. Bishop*, No. 89-235 (Fla. 2d Cir. Ct. March 5, 1990)



Procedural Requirements Voting

Board members may use written ballots to cast a vote *if* the votes are made openly at a public meeting, the name of the person who voted and his or her selection are written on ballot, and the ballots are maintained and made available for public inspection. AGO 73-344

A member of a state, county, or municipal board who is present at a meeting cannot abstain from voting unless there is, or appears to be, a possible conflict of interest under the Code of Ethics for Public Officers and Employees. Section 286.012, F.S.



Exemptions

- *Presumption of Openness*: All meetings between two or more members of the same board or commission are open to the public unless there is a *specific* statutory exemption.
- Only the Legislature can create an exemption to our constitutional right of access. Art. I, s. 24(c), Fla. Con.



Cure Meetings

- No resolution, rule, regulation, or formal action shall be considered binding except as taken at an open meeting. Section 286.011, F.S.
- Action taken in violation of the Sunshine Law is void *ab initio*. *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974)
- Action – but *not* violations - can be cured when the offending agency takes “independent final action in the sunshine.” *Tolar v. School Board of Liberty County*, 398 So. 2d 427, 429 (Fla. 1981)



Sanctions

- An unintentional violation: non-criminal infraction punishable by a fine up to \$500. Section 286.011(3)(a), F.S.
- A knowing violation: 2d degree misdemeanor punishable by a fine of not more than \$500 and/or a jail term of not more than 60 days. Section 286.011(3)(b), F.S.
- Suspension or removal from office. Section 112.52(1), F.S.
- Attorney's fees and court costs. Sections 286.011(4) and (5), F.S.

