

THE SUNSHINE LAW (Chapter 286 F.S.)

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Florida Statute § 286.011

Provides the right of access to governmental proceedings at the state and local levels.

- (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.

Florida Statute § 286.011

Minutes:

(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.

Notice

Must be reasonable.

Location

Must be open and accessible to the public.

Minutes

Must be written, promptly approved and open to the public for inspection.



Meeting in Public

- The Sunshine Law requires boards to meet in public; boards may not take action or engage in private discussions of board business via written correspondence, e-mails, text messages, or other electronic communications.

What is a public meeting?

- 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;
- Both formal and casual meetings of two or more board members;
- Written correspondence between board members with comments being provided to other members;
- Telephone conversations between two or more board members; and
- Meeting of liaisons of two or more board members.

Florida Statute § 286.011

Who does it apply to?

- The statute is “broadly construed to effect its remedial and protective purposes.”
- Applicable to elected and appointed bodies.
- Advisory boards are subject to Sunshine Law even though their recommendations are not binding upon the board or commission that created them.
- A single member of a board who has been delegated the authority to act (take official action) on behalf of the board (i.e., lease of land) is subject to the Sunshine Law.
- If a board or committee is delegated any decision-making authority by a public official, its meetings are subject to the Sunshine Law.

Interaction with Staff

As a general rule, individual board members “may call upon staff members for factual information and advice without being subject to the Sunshine Law’s requirements.” *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 764 (Fla. 2010). And see AGO 81-42.

Slippery Slopes



Slippery Slope I

- Members of an advisory committee created to make recommendations to the superintendent on boundaries violated the Sunshine Law when they exchanged private electronic communications (emails and Facebook messages) relating to committee business.
- A procedure whereby a board takes official action by circulating a memorandum for each board member to sign whether the board member approves or disapproves of a particular issue, violates the Sunshine Law.

- However, a commissioner may send a written report to other commissioners on a subject that will be discussed at a public meeting without violating the Sunshine Law, if prior to the meeting, there is no interaction related to the report among the commissioners and the report, which must be maintained as a public record, is not being used as a substitute for action at a public meeting. E-mail communication of information from one council member does not constitute a meeting subject to the Sunshine Law when it does not result in the exchange of council members' comments or responses on subjects involving foreseeable action by the council.
- If, on the other hand, the report is circulated among board members for comments with such comments being provided to other members, there is interaction among the board members which is a violation.

Slippery Slope II

Board members attending meetings of another public board

May one or more members of a board attend or participate in a meeting of another public board. In AGO 99-55, the Attorney General's Office said that a school board member could attend and participate in the meeting of an advisory committee appointed by the school board without prior notice of his or her attendance. However, the opinion cautioned that "if it is known that two or more members of the school board are planning to attend and participate, it would be advisable to note their attendance in the advisory committee meeting notice."

While recognizing that commissioners may attend meetings of a second public board and comment on agenda items that may subsequently come before the commission for final action, the Attorney General Opinions have also advised that if more than one "commissioner is in attendance at such a meeting, no discussion or debate may take place among the commissioners on those issues." AGO 00-68. In short, any commissioners in attendance may not engage in a discussion or debate among themselves.

Slippery Slope III

Community forums sponsored by private organizations

A “Candidates’ Night” sponsored by a private organization at which candidates for public office, including several incumbent city council members, will speak about their political philosophies, trends, and issues facing the city, is not subject to the Sunshine Law unless the council members discuss issues coming before the council among themselves. AGO 92-05. However, Inf. Op. to Jove, January 12, 2009, concluded that a public forum hosted by a city council member with city council members invited to attend and participate in the discussion would be subject to the Sunshine Law.

Similarly, in AGO 94-62, the Attorney General’s Office concluded that the Sunshine Law does not apply to a political forum sponsored by a private civic club during which county commissioners express their position on matters that may foreseeably come before the commission, so long as the commissioners avoid discussions among themselves on these issues.

However, caution should be exercised to avoid situations in which private political or community forums may be used to circumvent the statute's requirements. In *State v. Foster*, 12 F.L.W. Supp. 1194a (Fla. Broward Co. Ct. September 26, 2005), the court rejected the argument that the Sunshine Law permitted city commissioners to attend a private breakfast meeting at which the sheriff spoke and the commissioners individually questioned the sheriff but did not direct comments or questions to each other. The court ruled that the discussion should have been held in the Sunshine because the sheriff was a "common facilitator" who received comments from each commissioner in front of the other commissioners.

More recently, members of a city planning and zoning commission violated the Sunshine Law when they participated in discussions at meetings of a community improvement organization which involved planning and zoning matters. *City of Bradenton Beach v. Metz*, No. 2017 CA 003581 (Fla. 12th Cir. Ct. August 9, 2019).

Slippery Slope IV

E-mail, text messages, and other written communications between board members

The Sunshine Law requires boards to meet in public; boards may not take action on or engage in private discussions of board business via written correspondence, e-mails, text messages, or other electronic communications. Thus, members of an advisory committee created to make recommendations to the superintendent on school attendance boundaries violated the Sunshine Law when they exchanged private electronic communications (emails and Facebook messages) relating to committee business. *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018).

Similarly, city commissioners may not use an electronic newsletter to communicate among themselves on issues that foreseeably may come before the commission. In AGO 09-19 it was determined that members of a city board or commission may not engage on the city's Facebook page in an exchange or discussion of matters that foreseeably will come before the board or commission for official action.

Slippery Slope V

Fact-finding or inspection trips

The Sunshine Law does not prohibit advisory boards from conducting inspection trips provided that the board members do not discuss matters which may come before the board for official action. See *Bigelow v. Howze*, 291 So. 2d 645 (Fla. 2d DCA 1974); and AGO 02-24 (two or more members of an advisory group created by a city code to make recommendations to the city council or planning commission on proposed development may conduct vegetation surveys without subjecting themselves to the requirements of the Sunshine Law, provided that they do not discuss among themselves any recommendations or comments the committee may make).

The “fact-finding exception” to the Sunshine Law, however, does not apply to a board with “ultimate decision-making authority.” *Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 5th DCA 2008), held that a district school board, as the ultimate decision-making body, violated the Sunshine Law when the board, together with school officials and members of the media, took a bus tour of neighborhoods affected by the board’s proposed rezoning even though board members were separated from each other on the bus, did not express any opinions or their preference for any of the rezoning plans, and did not vote during the trip.

Slippery Slope VI

Selection and screening committees

The Sunshine Law applies to advisory committees created by an agency to assist in the selection process. In *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983), a committee created to screen applications and make recommendations for the position of a law school dean was held to be subject to the Sunshine Law. By screening applicants and deciding which applicants to reject from further consideration, the committee performed a policy-based, decision-making function delegated to it by the president of the university. In *Krause v. Reno*, 366 So. 2d 1244 (Fla. 3d DCA 1979) it was held that the Sunshine Law governs advisory group created by city manager to assist in screening applications and to recommend several applicants for the position of chief of police.

However, if the sole function of the screening committee is simply to gather information for the decision-maker, rather than to accept or reject applicants, the committee's activities are outside the Sunshine Law. *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985), held that the Sunshine Law was not violated when the city manager, who was responsible for selecting the new police chief, asked several people to sit in on the interviews, as the only function of this group was to assist the city manager in acquiring information on the applicants he had chosen by asking questions during the interviews and then discussing the qualifications of each candidate with the city manager after the interview.

Quasi-judicial matters, proceedings or hearings

The Sunshine Law does not authorize boards to conduct closed-door hearings or deliberations simply because the board is acting in a “quasi-judicial” capacity. *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973).

Thus, in the absence of statutory exemption, “[t]he fact that a board or commission is acting in a quasi-judicial capacity does not remove it from the reach of section 286.011, Florida Statutes.” AGO 10-04. AGO 10-15 determined that a special magistrate is subject to the Sunshine Law when exercising the delegated decision-making authority of the value adjustment board.

Agendas

The Sunshine Law does not mandate that an agency provide notice of each item to be discussed via a published agenda although the Attorney General's Office has recommended the publication of an agenda, if available. The courts have rejected such a requirement because it could effectively preclude access to meetings by members of the general public who wish to bring specific issues before a governmental body.

Thus, the Sunshine Law does not require boards to consider only those matters on a published agenda. “[W]hether to impose a requirement that restricts every relevant commission or board from considering matters not on an agenda is a policy decision to be made by the legislature.” *Law and Information Services, Inc. v. City of Riviera Beach*, 670 So. 2d 1014, 1016 (Fla. 4th DCA 1996).

Luncheon meetings

Public access to meetings of public boards or commissions is the key element of the Sunshine Law, and public agencies are advised to avoid holding meetings in places not easily accessible to the public. The Attorney General's Office has suggested that public boards or commissions avoid the use of luncheon meetings to conduct board or commission business. These meetings may have a "chilling" effect upon the public's willingness or desire to attend. People who would otherwise attend such a meeting may be unwilling or reluctant to enter a public dining room without purchasing a meal and may be financially or personally unwilling to do so. Inf. Op. to Campbell, February 8, 1999; and Inf. Op. to Nelson, May 19, 1980.

Tape recording or Internet archive as minutes

The Sunshine Law does not require that public boards and commissions tape record their meetings. See AGO 86-21. However, other statutes may require that certain proceedings be recorded. See *Carlson v. Department of Revenue*, 227 So. 3d 1261 (Fla.1st DCA 2017) (statute mandating that a “complete recording” be made of portions of a closed negotiation team meeting requires more than an agenda and meeting notes).

However, while a board is authorized to tape record the proceedings if it chooses to do so, the Sunshine Law also requires written minutes. AGO 75-45. Similarly, while a board may archive the full text of all workshop discussions conducted on the Internet, written minutes of the workshops must also be prepared and promptly recorded. AGO 08-65. Moreover, the tape recordings are public records.

While the Sunshine Law does not specify the type of notice which must be given in all cases, the following notice guidelines are suggested:

1. The 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. The notice should be prominently displayed in the area in the agency's offices set aside for that purpose, e.g., for cities, in city hall, and on the agency's website.
3. Except in the case of emergency or special meetings, notice should be provided at least 3 days prior to the meeting. Emergency sessions should be afforded the most appropriate and effective notice under the circumstances.
4. Special meetings should have no less than 24 and preferably at least 72 hours reasonable notice to the public. See *Yarbrough v. Young*, 462 So. 2d 515 (Fla. 1st DCA 1985) (three days notice of special meeting deemed adequate).
5. The use of press releases, faxes, e-mails, and/or phone calls to the local news media is encouraged in providing notice of upcoming meetings.

Voting Abstention

Section 286.012, F.S., provides: A member of a state, county, or municipal governmental board, commission, or agency who is present at a meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may not abstain from voting . . . and a vote shall be recorded or counted for each such member present, unless, with respect to any such member, there is, or appears to be, a possible conflict of interest under s. 112.311, s. 112.313, or s. 112.3143, or additional or more stringent standards of conduct, if any, adopted pursuant to s. 112.326. If there is or appears to be a possible conflict under s. 112.311, s. 112.313, or s. 112.3143, the member shall comply with the disclosure requirements of s.112.3143. If the conflict is one arising from the additional or more stringent standards adopted pursuant to s. 112.326, the member shall comply with any disclosure requirements adopted pursuant to s. 112.326. If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.

Failure of a member to vote, however, does not invalidate the entire proceedings. *City of Hallandale v. Rayel Corporation*, 313 So. 2d 113 (Fla. 4th DCA 1975)(to rule otherwise would permit any member to frustrate official action merely by refusing to participate).

Florida Statute § 286.0114

Public Participation

- Requires that members of the public be given a “reasonable opportunity to be heard on a proposition before a board or commission.”
- The statute limits how a board or commission may restrict such opportunity to be heard (e.g., amount of time given, request forms, procedures for group representatives to speak on behalf of a group, designated time for public comment).
- The statute provides for exemptions (e.g., emergencies - if compliance would result in unreasonable delay, ministerial acts, an exempt meeting, quasi-judicial hearings).
- The statute provides for enforcement via injunction and the award of attorney’s fees for violations.
- A violation by a board or commission of this statute will NOT void the official action taken by such board or commission.

Miscellaneous application issues:

- If a public meeting is properly noticed, there is no requirement under Sunshine Law that *additional* notice of a change in the agenda is required.
- Two or more members of the same board or commission may attend social gatherings together as long as no matters which may come before such board or commission are discussed.
- Request for certain members of the public to voluntarily leave a meeting may be a violation of the Sunshine Law especially if requested by a board or commission member.
- Secret ballots during a meeting may violate the Sunshine Law.

Candidates or members-elect

Candidates

The Sunshine Law does not apply to candidates for office, unless the candidate is an incumbent seeking reelection. AGO 92-05.

Members-elect

The requirements of the Sunshine Law apply not only to meetings of covered boards or commissions but also to “meetings with or attended by any person elected to such board or commission, but who has not yet taken office.” Section 286.011(1), F.S. Thus, members-elect are subject to the Sunshine Law in the same manner as board members who are currently in office. *Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973) determined that an individual, upon election to public office, loses his or her status as a private individual and acquires a position more akin to that of a public trustee and therefore is subject to the Sunshine Law.

A candidate who is unopposed is not considered to be a member-elect subject to the Sunshine Law until the election has been held. AGO 98-60. Accord Inf. Op. to Popowitz, August 12, 2016. The Popowitz opinion references a 2010 opinion from the Division of Elections (Div. of Elections Op. 10-09, July 26, 2010), finding that the date of a candidate’s election to office could be deemed to be either the date specified by a court in an election case, election day itself, the date the final canvassing board certifies the election results, or some other date, depending upon the particular factual situation involved.

General Exemptions from Public Meetings:

- Pending litigation...settlement negotiations or strategy sessions related to litigations expenditures...limited attendees (sec. 286.011(8), F.S.)
- Labor negotiations-bargaining team – exemption as to public meetings and public records (sec. 447.605, F.S.)
- Risk management committee (sec. 768.28(16)(c), F.S.)
- Security system meeting (sec. 286.0113(1), F.S.)
- Negotiation with a vendor (sec. 286.0113(2)(b), F.S.)

Florida Statute § 286.011

Consequences for Violations:

- Criminal penalties;
- Removal from office;
- Non-criminal infractions (AGO);
- Civil actions for injunctive and declaratory relief;
- Attorney's fees; and
- Action taken in violation of law is void *ab initio*.

W.D. Childers goes to jail

Ex-Senate president goes to jail

■ W.D. Childers starts a 60-day sentence for Sunshine Law violations — even as his lawyer asks a judge to set him free.



AP

W.D. Childers comments briefly as he enters jail Tuesday in Pensacola. He said he had no reason to be scared.

Florida Headlines

- “South Bay commissioner convicted of Sunshine Law violation” *Palm Beach Post*, Nov. 9, 2013
- “South Bay commissioner fined \$250 for violating Sunshine Law” *Palm Beach Post*, Dec. 9, 2013
- “South Bay city commissioner suspended” *Sun Sentinel*, December 18, 2013
- “Sarasota admits to Sunshine Law violation” *Sarasota Herald-Tribune*, November 15, 2013
- “Astatula officials accused of violating ‘Sunshine’ laws” *Orlando Sentinel*, October 1, 2010

You Can Cure a Violation

- Sunshine Law violations may be cured by independent, final action taken completely in the Sunshine.
- No rubber stamp meeting

Cure...

Don't Ignore



Thank You

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