



2011 Sunshine Law Overview

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A. Scope of the Sunshine Law

- Florida's Government in the Sunshine Law, commonly referred to as the Sunshine Law, provides a right of access to governmental proceedings at both the state and local levels. The law is equally applicable to elected and appointed boards and has been applied to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action.

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There are three basic requirements :

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

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- Advisory boards 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 upon the agencies that create them.

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- Neither Legislature nor the courts are subject to the Sunshine Law. There is a constitutional provision that provides access to legislative meetings but it is not as strict as the Sunshine Law. However, if legislators are appointed to serve on a board subject to the Sunshine Law, the legislator members are subject to the same Sunshine Law requirements as the other board members.

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- Meeting of staff are not ordinarily subject to the Sunshine Law. However, when a staff member ceases to function in a staff capacity and is appointed to a committee which is delegated authority normally within the public board or commission, the staff member loses his or her identity as staff while working on the committee and the Sunshine Law is applicable to the committee. It is the nature of the act performed, not the makeup of the committee or the proximity of the act to the final decision, which determines whether a committee composed of staff is subject to the Sunshine Law.

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- Only the Legislature can create an exemption to the Sunshine Law (by a 2/3 vote) and allow a board to close a meeting. *Exemptions are narrowly construed.*

- Board members may not use e-mail or the telephone to conduct a private discussion about board business. Board members may send a “one-way” communication to each other as long as the communication is kept as a public record and there is no response to the communication except at an open public meeting. Accordingly, any “one-way” communications (for example one board member wants to forward an article to the board members for information) should be distributed by the board office so that they can be preserved as public records and ensure that any response to the communication is made only at a public meeting.

- While a board member is not prohibited from discussing board business with staff or a nonboard member, these individuals cannot be used as a liaison to communicate information between board members. For example, a board member cannot ask staff to poll the other board members to determine their views on a board issue.

B. Board meetings

- Board members are not prohibited from using written ballots to cast a vote as long as the votes are made openly at a public meeting, the name of the person who voted and his or her selection are written on the ballot, and the ballots are maintained and made available for public inspection in accordance with the Public Records Act.

- While boards may adopt reasonable rules and policies to ensure orderly conduct of meetings, the Sunshine Law does not allow boards to ban nondisruptive videotaping, tape recording, or photography at public meetings.

- Board meetings should be held in buildings that are open to the public. This means that meetings should not be held in private homes.

- The phrase "open to the public" means open to all who choose to attend. Boards are not authorized to exclude some members of the public (i.e. employees or vendors) from public meetings.

C. Penalties

- Any member of a board or commission or of any state agency or authority of a county, municipal corporation, or political subdivision who *knowingly* violates the Sunshine Law is guilty of a misdemeanor of the second degree. An unintentional violation may be prosecuted as a noncriminal infraction resulting in a civil penalty up to \$500.

- The Sunshine Law provides that no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting.

- Recognizing that the Sunshine Law should be construed so as to frustrate all evasive devices, the courts have held that action taken in violation of the law was void *ab initio*.

- Where, however, a public board or commission does not merely perfunctorily ratify or ceremoniously accept at a later open meeting those decisions which were made at an earlier secret meeting but rather takes "independent final action in the sunshine," the board's decision may stand.

D. Additional Resources

1. Office of Attorney General Pam Bondi website:
<http://www.myfloridalegal.com>
2. First Amendment Foundation website:
<http://www.floridafaf.org>