

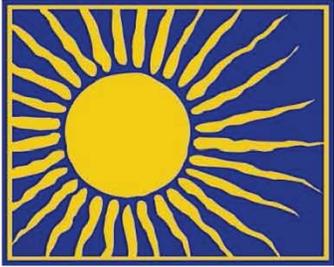
Constitutional Right of Access/Meetings State Agencies and Local Governments

Article I, section 24(b), Fla. Con.

“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”

<http://www.flsenate.gov/Laws/Constitution#A1S24>

The term “collegial body” is generally defined as a board, a commission, a committee, a council, a task force, etc.



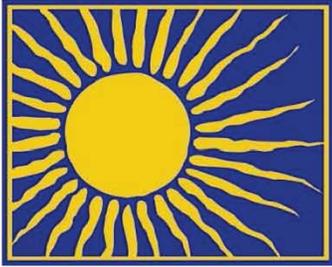
Florida's Sunshine Law

Section 286.011, Florida Statutes

The Sunshine Law contains three basic 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.

<http://www.flsenate.gov/Laws/Statutes/2014/286.011>



Procedural Requirements

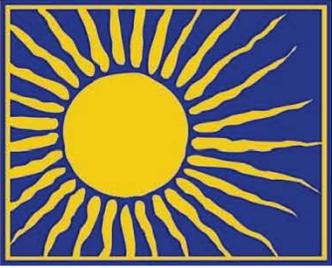
Reasonable Notice

A vital element of the Sunshine Law is the requirement that boards subject to the law must provide “reasonable notice” of all meetings. **Section 286.011(1), F.S.**

In order for a meeting to be “public,” reasonable notice of the meeting must be given. ***Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973); *Yarbrough v. Young*, 462 So. 2d 515 (Fla. 1st DCA 1985)**

Florida’s Attorney General recommends that a meeting notice contain the time and place of the meeting and, if available, an agenda; if an agenda is not available, the notice should include a statement of the general subject matter(s) to be considered. **2015 Government-in-the-Sunshine Manual, p. 37**

NOTE: Other statutes, codes or ordinances may impose different – and more stringent notice requirements – than those required by s. 286.011. For example, state agencies are subject to the notice requirements under ch. 120, the Administrative Procedures Act.



Procedural Requirements

Public Participation

Shortly after passage of the Sunshine Law, Florida Supreme Court stated 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)

Later court decisions, however, said that because the Sunshine Law didn’t specifically require the public be given an opportunity to speak, local policies prohibiting public participation didn’t violate the law. *Keesler v. Community Maritime Park Associates, Inc.*, 32 So. 3d 659 (Fla. 1st DCA 2010); *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010)



Procedural Requirements

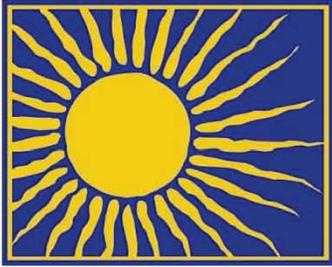
Public Participation

In 2013, the Florida Legislature approved a law, s. 286.0114, F.S., 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 is considered, but must occur within *reasonable proximity* to the meeting at which official action will be taken.

The law allows for the adoption of reasonable rules requiring orderly conduct and the orderly progression of a meeting, subject to a few minor exceptions.

<http://www.flsenate.gov/Laws/Statutes/2014/286.0114>



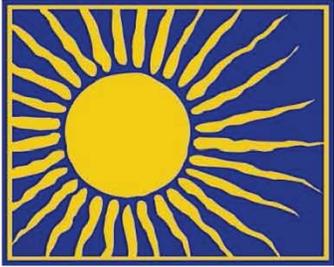
Procedural Requirements

Public Participation

A government agency may adopt *reasonable rules* which require orderly behavior and allow for the orderly progression of public meetings. **Section 286.0114, F.S.**

To remove a speaker who has become disruptive during a meeting does not violate the speaker's First Amendment Rights. ***Jones v. Heyman, 888 F.2d 1328 (11th Cir. 1989)***

However, 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)***



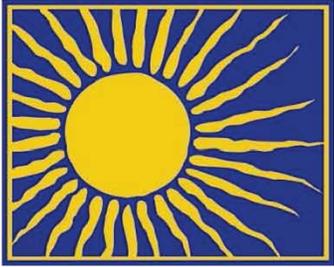
Procedural Requirements

Voting

No member of any state, county, or municipal board who is present at a meeting can 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.**

Secret ballots violate the Sunshine Law. **AGOs 73-264; 72-326; and 71-32**

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**



Procedural Requirements

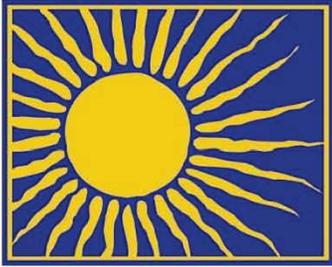
Minutes

Section 286.011(2) requires that minutes of public meetings, including workshops, be promptly recorded and open to public inspection. **AGOs 08-65 and 74-62**

The minutes are public records subject to disclosure when the person responsible for preparing the minutes has performed his or her duty even though the minutes haven't yet been sent to the board members or officially approved by the board. **AGO 91-26**

The Sunshine Law does not require that meetings be recorded, but other statutes, including some exemptions, require that meetings be recorded. **AGOs 86-21 and 10-42.**

Tape recordings of meetings are public records. **AGO 86-21**



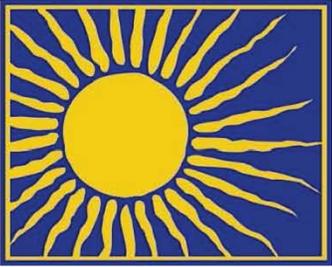
What is a “meeting?”

Two or More Members

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. Stemberge, 278 So.2d 288 (Fla. 3d DCA 1973)

The Florida Supreme Court has said the Sunshine Law is to be construed “so as to *frustrate all evasive devices.*” *Town of Palm Beach v. Gradison, 296 So. 2d 473, 477 (Fla. 1974)*



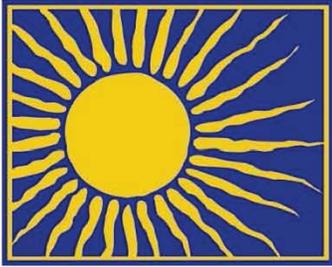
What is a “meeting?”

Two or More Members

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)

The Sunshine Law requires boards to meet in public; boards may not take action or engage in private discussions of public business via written correspondence, emails, text messages, or other electronic communications. **AGO 89-39**



What is a “meeting?”

Who is Covered by the Sunshine Law?

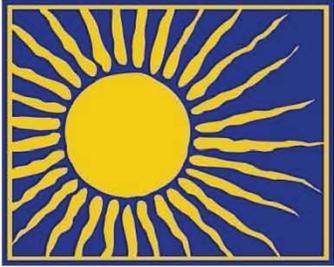
State Agencies and Local Governments

The Government in the Sunshine Law applies to public collegial bodies throughout Florida, at the local as well as state level, including “any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision.” **City of Miami Beach v. Berns, 245 So. 2d 38 (Fla. 1971)**

“All governmental entities in Florida are subject to the requirements of the Sunshine Law unless specifically exempted. **Sarasota Citizens for Responsible Government v. City of Sarasota, 48 So. 3d 755 (Fla. 2010)**

The Sunshine Law is equally applicable to:

- Elected and appointed boards **AGO 73-223**
- Special district boards **AGO 74-169**
- Boards created by interlocal agreement **AGO 84-16**



What is a “meeting?”

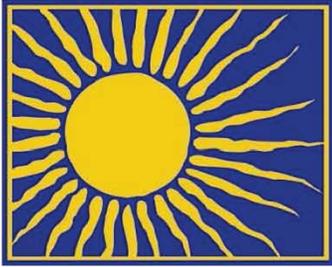
Who is Covered by the Sunshine Law?

Advisory Board and Committees

Advisory boards or committees created pursuant to law or ordinance or otherwise established by public agencies for the purpose of making recommendations are subject to the Sunshine Law even if those recommendations are not binding.

Sarasota Citizens for Responsible Government v. City of Sarasota, 48 So. 3d 755 (Fla. 2010)

It is the *function* of the advisory board or committee and not its *composition* that triggers sunshine. *Town of Palm Beach v. Gradison, 296 So.2d 473 (Fla. 1974)*



What is a “meeting?”

Who is Covered by the Sunshine Law?

Administrative Staff

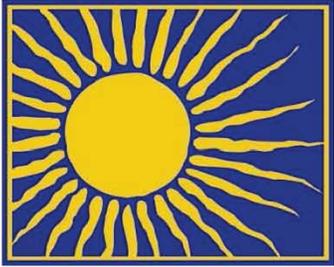
Staff meetings are not generally subject to the Sunshine Law.

School Board of Duval County v. Florida Publishing Company, 670 So.2d 99, 101 (Fla. 1st DCA 1996)

As a general rule, a board member may call upon a staff member for factual information and advice on a given issue. *Sarasota Citizens for Responsible Government v. City of Sarasota, 48 So. 3d 755 (Fla. 2010)*

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

AGOs 89-23; 75-59



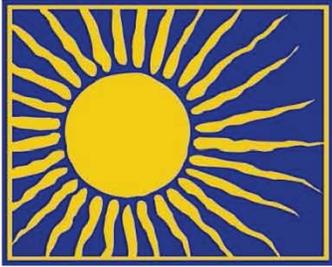
What is a “meeting?”

Who is Covered by the Sunshine Law?

Non-Board Members

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. **AGOs 74-47; 89-39**

According to the Florida Supreme Court, the Sunshine Law is to be construed “*so as to frustrate all evasive devices.*” ***Town of Palm Beach v. Gradison, 296 So. 2d 473, 477 (Fla. 1974)***



Exemptions

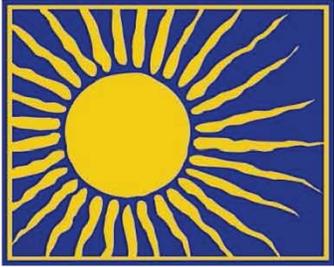
Presumption of Openness

The Sunshine Law is to be liberally construed in favor of openness, and any exceptions to the right of access are to be narrowly construed. *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969); *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983)

Article I, s. 24(b), Fla. Con., requires that all meetings of any collegial body at which public business is to be transacted or discussed be open and noticed to the public.

Only the Legislature can create an exemption to our constitutional right of access. **Art. I, s. 24(c), Fla. Con.**

<http://www.flsenate.gov/Laws/Constitution#A1S24>



Sunshine Law Violations

Sanctions - Penalties

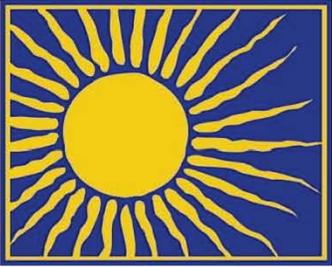
A public officer who *unintentionally* violates the Sunshine Law is guilty of a non-criminal infraction punishable by a fine of up to \$500. **Section 286.011(3)(a), F.S.**

An *intentional* violation of the Sunshine Law is a second degree misdemeanor, and includes activities occurring out of state. **Sections 286.011(3)(b) - (c), F.S.**

Second degree misdemeanors are punishable by a fine of not more than \$500 and/or a jail term not exceeding 60 days.

Sections 775.082(4)(b) and 775.083(1)(e), F.S.

Public officers who intentionally violate the Sunshine Law are subject to suspension or removal from office. **Section 112.52, F.S.**



Sunshine Law Violations

Sanctions – Fees and Costs

If a court determines that a board or commission violated the Sunshine Law, the court *must* award reasonable attorney fees and court costs against the agency, including fees and costs incurred in an appeal. **Sections 286.011(4) – (5), F.S.**

Attorney fees and court costs can be assessed against an individual member of a board or commission. **Sections 286.011(4) – (5), F.S.**

A board member who seeks the advice of the board's attorney and follows that advice, will not have to pay such fees and costs. **Sections 286.011(4) – (5), F.S.**