



FLORIDA'S SUNSHINE MANUAL
PART I: GOVERNMENT IN THE SUNSHINE LAW
[ALL-IN-ONE DOCUMENT]

Official Handbook on Public Records Laws

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Part I
Government in the Sunshine Law

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FLORIDA SUNSHINE MANUAL

PART 1

GOVERNMENT IN THE SUNSHINE LAW



FLORIDA'S SUNSHINE MANUAL

AUTHOR: Florida's Office of the Attorney General

DATE: March 9, 2023

PART: 1 GOVERNMENT IN THE SUNSHINE LAW

SUBPART: A SCOPE OF THE SUNSHINE LAW

SECTIONS: 1-A-0

LINK: TextBookDiscrimination.com/Handbooks/PublicRecords/FL/S1A



1-A-0 | SCOPE OF THE SUNSHINE LAW

Florida's Government in the Sunshine Law, s. 286.011, F.S., commonly referred to as the Sunshine Law, provides a right of access to governmental proceedings of public boards or commissions at both the state and local levels. The law is equally applicable to elected and appointed boards, and applies 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. Members-elect to such boards or commissions are also subject to the Sunshine Law, even though they have not yet taken office. There are three basic requirements of s. 286.011, F.S.:

- (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 and promptly recorded.

The complete text of the Government in the Sunshine Law and related statutes may be found in Appendix B.

A constitutional right of access to meetings of collegial public bodies is recognized in Art. I, s. 24, Fla. Const. See *Frankenmuth Mutual Insurance Company v. Magaha*, 769 So. 2d 1012, 1021 (Fla. 2000), noting that the Sunshine Law "is of both constitutional and statutory dimension." Virtually all collegial public bodies are covered by the open meetings mandate of this constitutional provision with the exception of the judiciary and the state Legislature, which has its own constitutional provision requiring access. The only exceptions are those established by law or by the Constitution. The complete text of Art. I, s. 24, Fla. Const., may be found in Appendix A of this manual.

The Government in 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." The statute thus applies to public collegial bodies within this state, at the local as well as state level. *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, 762 (Fla. 2010). *Accord Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021).



The Sunshine Law is equally applicable to elected and appointed boards or commissions. AGO 73-223. Special district boards (AGO 74-169) and boards created by interlocal agreement (AGO 84-16) are also included. And see Inf. Op. to Martelli, July 20, 2009 (State Fair Authority, created by statute as a public corporation, subject to Sunshine Law). Cf. *Turner v. Wainwright*, 379 So. 2d 148, 155 (Fla. 1st DCA 1980), affirmed and remanded, 389 So. 2d 1181 (Fla. 1980) (legislative requirement that certain board meetings must be open to the public does not imply that the board could meet privately to discuss other matters).

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AUTHOR: Florida's Office of the Attorney General

DATE: March 9, 2023

PART: 1 GOVERNMENT IN THE SUNSHINE LAW

SUBPART: B WHAT ENTITIES ARE COVERED BY THE SUNSHINE
LAW? APPLICATION OF THE SUNSHINE LAW TO

SECTIONS: 1-B-1 through 1-B-12

LINK: [TextBookDiscrimination.com/Handbooks/PublicRecords/FL/S1B](https://www.TextBookDiscrimination.com/Handbooks/PublicRecords/FL/S1B)



1-B-1 | ADVISORY BOARDS

Advisory boards and committees created by public agencies may be subject to the Sunshine Law, even though their recommendations are not binding upon the entities that create them. The "dispositive question" is whether the committee has been delegated "decision-making authority," as opposed to mere "information-gathering or fact-finding authority." *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). "Where the committee has been delegated decision-making authority, the committee's meetings must be open to public scrutiny, regardless of the review procedures eventually used by the traditional governmental body." *Id.* Accord *Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021), quoting extensively from *Sarasota Citizens for Responsible Government*, in finding that textbook evaluation committees created by the superintendent pursuant to school board policy to recommend textbooks, had been delegated decision-making authority and were therefore subject to the Sunshine Law even though the school board made the final decision to approve the textbooks.

For example, in *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974), a citizen planning committee appointed by a city council to assist in revision of zoning ordinances was found to be subject to the Sunshine Law. The Gradison court, concluding that the committee served as the alter ego of the council in making tentative decisions, stated that "any committee established by the Town Council to act in any type of advisory capacity would be subject to the provisions of the government in the sunshine law." *Id.* at 476. See also *Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So. 2d 694, 695 (Fla. 3d DCA 1988) (committee which compiled a report that was perfunctorily accepted by the board made a significant ruling affecting decision-making process and was subject to s. 286.011); and *Lyon v. Lake County*, 765 So. 2d 785 (Fla. 5th DCA 2000) (Sunshine Law applies to site plan review committee created by county ordinance to serve in an advisory capacity to the county manager). Accord AGOs 98-13 (citizen advisory committee appointed by city council to make recommendations to the council regarding city government and city services), and 01-84 (school advisory council created pursuant to former s. 229.58 [now s. 1001.452], F.S).

The Sunshine Law does not establish a lesser standard for members of advisory committees that are subject to the Sunshine Law. See



Monroe County v. Pigeon Key Historical Park, Inc., 647 So. 2d 857, 869 (Fla. 3d DCA 1994) (“[T]he Sunshine Law equally binds all members of governmental bodies, be they advisory committee members or elected officials”). Nor is there an exception from the Sunshine Law for an advisory group created by a county commissioner and composed of volunteers. See Inf. Op. to Wallace, January 7, 2019, emphasizing that it is the nature of the functions of an advisory group that determines the application of the Sunshine Law, not the manner of their appointment or their volunteer status.

a. Advisory Boards Appointed by a Single Public Official

The Sunshine Law applies to advisory committees appointed by a single public official as well as those appointed by a collegial board. See Inf. Op. to Wallace, January 7, 2019 (“In the first place, advisory groups appointed by a single public official are not immunized from the public meetings requirement”).

For example, in Wood v. Marston, 442 So. 2d 934 (Fla. 1983), the Florida Supreme Court determined that the Sunshine Law applied to an ad hoc advisory committee appointed by a university president to screen applications and make recommendations for the position of law school dean, because the committee, in deciding which applicants to reject from further consideration, performed a policy-based, decision-making function. See also Silver Express Company v. District Board of Lower Tribunal Trustees, 691 So. 2d 1099 (Fla. 3d DCA 1997) (committee established by agency purchasing director to consider and rank various contract proposals deemed subject to Sunshine Law); Florida Citizens Alliance, Inc. v. School Board of Collier County, 328 So. 3d 22 (Fla. 2d DCA 2021) (textbook committees created by the superintendent pursuant to school board policy to evaluate and rank textbooks for approval by the school board governed by s. 286.011, F.S., because they “clearly ‘helped to crystalize the decision to be made’ by the School Board,” quoting from Silver Express, 691 So. 2d at 1100); and Linares v. District School Board of Pasco County, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available online in the Cases database at the open government site at myfloridalegal.com (Sunshine Law applies to committee formed by school board planning director to develop and recommend to the superintendent proposed new school attendance boundaries). Accord AGOs 05-05 (fact that advisory group was created by

chief of police and not city commission and its recommendations were made to police chief would not remove group from ambit of the Sunshine Law); 85-76 (ad hoc committee appointed by mayor for purpose of making recommendations concerning legislation); 87-42 (ad hoc committee appointed by mayor to meet with Chamber of Commerce and draft proposal for transfer of city property). And see Inf. Op. to Lamar, August 2, 1993 (transition team appointed by mayor to make recommendations regarding governmental reorganization).

b. Fact-Finding Committees

A limited exception to the applicability of the Sunshine Law to advisory committees has been recognized for advisory committees established for fact-finding only. "[A] committee is not subject to the Sunshine Law if the committee has only been delegated information gathering or fact-finding authority and only conducts such activities." *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). See also *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172 (Fla. 1st DCA 2017); and *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985). Accord AGO 95-06 (when a group, on behalf of a public entity, functions solely as a fact-finder or information gatherer with no decision-making authority, no "board or commission" subject to the Sunshine Law is created).

"In determining whether a committee is subject to the Sunshine Law, the actual function of the committee must be scrutinized to determine whether it is exercising part of the decision-making function by sorting through options and making recommendations to the governmental body." Inf. Op. to Randolph, June 10, 2010. Thus, if an advisory committee has a decision-making function in addition to fact-finding, the Sunshine Law is applicable. See *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983), recognizing that while a "search and screen" committee had a fact-gathering role in soliciting and compiling applications, the committee also "had an equally undisputed decision-making function in screening the applicants" by deciding which of the applicants to reject from further consideration, and thus was subject to the Sunshine Law. And see AGO 94-21 (application of Sunshine Law to members of a negotiating team created by a city commission). Cf. *Collier County Public Schools v. Mason Classical Academy*, 342 So. 3d 753 (Fla. 2d DCA 2022), noting



that discussions between two school district employees and the school district attorney conducted as part of the fact-finding process in an investigation of a charter school "clearly were not meetings pursuant to section 286.011(1) because neither employee was a school board member or part of a decision-making committee").

Accordingly, the determination as to whether an advisory committee created by a public official is subject to the Sunshine Law will necessarily depend on the duties and responsibilities performed by the committee. See Inf. Op. to Wallace, January 7, 2019, noting that the mere designation of a committee's function as "providing feedback" to the public official is not dispositive of the status of the committee for Sunshine Law purposes; instead, "the key determination will be the exact nature of the feedback being requested and provided." See also AGO 98-13 (application of the Sunshine Law to a community advisory committee appointed by a city commission).

Moreover, the "fact-finding exception" applies only to advisory committees and not to boards that have "ultimate decision-making governmental authority." *Finch v. Seminole County School Board*, 995 So. 2d 1068, 1071-1072 (Fla. 5th DCA 2008). In *Finch*, the court held that the "fact-finding exception" did not apply to a school board as the ultimate decision-making body; thus the board could not take a fact-finding bus tour without complying with the Sunshine Law even though school board members were separated from each other by several rows of seats, did not discuss their preferences or opinions, and no vote was taken during the trip. And see Inf. Op. to Sugarman, August 5, 2015 (pension board not authorized to travel out of state to meet with financial consultants).

c. Staff Committees

The Sunshine Law applies to meetings of elected or appointed boards; it does not ordinarily apply to staff committees or meetings. See, e.g., *Occidental Chemical Company v. Mayo*, 351 So. 2d 336 (Fla. 1977), disapproved in part on other grounds, *Citizens v. Beard*, 613 So. 2d 403 (Fla. 1992); *School Board of Duval County v. Florida Publishing Company*, 670 So. 2d 99, 101 (Fla. 1st DCA 1996); and AGO 89-39. The Sunshine Law does not apply "when a governmental executive uses staff for a fact-finding and advisory function in fulfilling his or her

duties." *Knox v. District School Board of Brevard*, 821 So.2d 311, 315 (Fla. 5th DCA 2002).

Thus, a committee composed of staff that is responsible for advising and informing the decision-maker through fact-finding consultations is not subject to the Sunshine Law. *Bennett v. Warden*, 333 So. 2d 97 (Fla. 2d DCA 1976) (meetings of committee appointed by public college president to report on employee working conditions not subject to Sunshine Law). Cf. AGO 08-63 (although Sunshine Law does not apply to orientation sessions held by counties for special magistrates hired to hear value adjustment board petitions, "nothing would preclude a county from allowing the public to attend such orientations in order to enhance the knowledge of citizens who appear before value adjustment boards").

Accordingly, a state agency did not violate the Sunshine Law when agency employees conducted an investigation into a licensee's alleged failure to follow state law, and an assistant director made the decision to file a complaint as "[c]ommunication among administrative staff in fulfilling investigatory, advisory, or charging functions does not constitute a 'Sunshine' Law violation." *Baker v. Florida Department of Agriculture and Consumer Services*, 937 So. 2d 1161 (Fla. 4th DCA 2006), review denied, 954 So. 2d 27 (Fla. 2007). And see *Knox v. District School Board of Brevard*, supra, concluding that a team of employees appointed by an area superintendent to meet with her to interview, evaluate and recommend applicants to the superintendent served only in a "fact-finding or advisory" capacity since the superintendent received all applications for the position and he decided which applicants he would interview and nominate to the school board.

Similarly, the court in *Lyon v. Lake County*, 765 So. 2d 785 (Fla. 5th DCA 2000), ruled that the Sunshine Law did not apply to informal meetings of staff where the discussions were "merely informational," where none of the individuals attending the meetings had any decisionmaking authority during the meetings, and where no formal action was taken or could have been taken at the meetings.

Accordingly, "meetings among agency staff to assess and make recommendations regarding contract management do not implicate" open meetings requirements. *Florida Environmental Regulation Specialists, Inc. v. Florida Department of*

Environmental Protection, 342 So. 3d 710 (Fla. 1st DCA 2022). The court observed that "there was no delegation of policy making authority to any group of staff members at the department and the decision to terminate the contract was made by the agency official tasked with doing so." Id. See also *Molina v. City of Miami*, 837 So. 2d 462, 463 (Fla. 3d DCA 2002) (police discharge of firearms committee not subject to Sunshine Law because the committee "is nothing more than a meeting of staff members who serve in a factfinding advisory capacity to the chief "); *J.I. v. Department of Children and Families*, 922 So. 2d 405 (Fla. 4th DCA 2006) (Sunshine Law not applicable to Department of Children and Families permanency staffing meetings conducted to determine whether to file a petition to terminate parental rights); and *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 179 (Fla. 1st DCA 2017) (Sunshine Law inapplicable to meetings "held solely for the purpose of gathering information").

However, if a staff committee has been delegated decision-making authority as opposed to mere fact-finding or information-gathering, the Sunshine Law applies to the committee. See *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983). 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. Id. See *News-Press Publishing Company, Inc. v. Carlson*, 410 So. 2d 546, 548 (Fla. 2d DCA 1982), concluding that it would be "ludicrous" to hold that "a certain committee is governed by the Sunshine Law when it consists of members of the public, who are presumably acting for the public, but hold that a committee may escape the Sunshine Law if it consists of individuals who owe their allegiance to, and receive their salaries from, the governing authority;" and *Evergreen the Tree Treasurers of Charlotte County, Inc. v. Charlotte County Board of County Commissioners*, 810 So. 2d 526, 531-532 (Fla. 2d DCA 2002) (staff committee members delegated decision-making authority from public officials no longer function as staff members but "stand in the shoes of such public officials" insofar as the Sunshine Law is concerned).

Thus, in *Silver Express Company v. District Board of Lower Tribunal Trustees*, 691 So. 2d 1099 (Fla. 3d DCA 1997), the district court determined that a committee composed primarily of staff that was created by a college purchasing director to

assist and advise her in evaluating contract proposals was subject to the Sunshine Law. The committee's job to "weed through the various proposals, to determine which were acceptable and to rank them accordingly" was sufficient to bring the committee within the scope of the Sunshine Law. See also *Roscow v. Abreu*, No. 03-CA-1833 (Fla. 2d Cir. Ct. August 6, 2004), available in the Cases database at the open government site at myfloridalegal.com (committee created by the state department of transportation and composed of officials from state, local, and federal agencies was subject to the Sunshine Law because the committee was responsible for screening and evaluating potential corridors and alignments for a possible expansion of the Suncoast Parkway); AGO 05-06 (city development review committee, composed of several city officials and representatives of various city departments to review and approve development applications, is subject to the Sunshine Law); and AGO 86-51 (land selection committee appointed by water management district and delegated decision-making authority to consider projects for inclusion on a list of proposed acquisition projects must comply with Sunshine Law "even though such committee may be composed entirely of district staff and its decisions and recommendations are subject to further action by the district's governing board").

The Silver Express decision was cited in a recent case finding that textbook committees 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. The court noted that even though the superintendent had the statutory duty to recommend textbooks to the school board, the school board had the authority to select the textbooks. Because the textbooks with the highest number of points were selected for recommendation to the school board, the textbook committee selections constituted rankings and "clearly 'helped to crystalize the decision to be made by'" the school board. *Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021), quoting *Silver Express*, 691 So. 2d at 1100.

Similarly, in *Dascott v. Palm Beach County*, 877 So. 2d 8 (Fla. 4th DCA 2004), the court held that a meeting of a pre-termination conference panel established pursuant to a county ordinance and composed of a department head, personnel



director, and equal opportunity director should have been held in the Sunshine. Even though the county administrator had the sole authority to discipline employees, that authority had been delegated to the department head who in turn chose to share that authority with the other members of the panel.

By contrast, in *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 763 (Fla. 2010), the Court found that a county administrator's discussions with staff and consultants while negotiating a memorandum of understanding with a baseball team did not violate the Sunshine Law because the administrator's "so-called negotiations team only served an informational role." According to the Court, "[t]his is not a situation where [the administrator] and the individuals he consulted made joint decisions. Cf. *Dascott v. Palm Beach County*, [supra]." See also *McDougall v. Culver*, 3 So. 3d 391 (Fla. 2d DCA 2009) and *Jordan v. Jenne*, 938 So. 2d 526 (Fla. 4th DCA 2006).

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1-B-2 | CANDIDATES OR MEMBERS-ELECT

a. Candidates

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

b. 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. See also *Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973) (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 s. 286.011, F.S.). Cf. Inf. Op. to Lamar, August 2, 1993 (Sunshine Law applies to transition team made up of citizens appointed by the mayor to make recommendations on city government reorganization). And see *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available in the Cases database at the open government site at myfloridalegal.com (Sunshine Law applied to advisory committee members "from the moment each member was selected to be on the [committee]").

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.

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1-B-3 | COMMISSIONS CREATED BY THE FLORIDA CONSTITUTION

Boards or commissions created by the Constitution which prescribes the manner of the exercise of their constitutional powers are not subject to s. 286.011, F.S., when carrying out such constitutionally prescribed duties. See *Kanner v. Frumkes*, 353 So. 2d 196 (Fla. 3d DCA 1977) (judicial nominating commissions are not subject to s. 286.011, F.S.). Cf. *In re Advisory Opinion of the Governor*, 334 So. 2d 561 (Fla. 1976) (clemency power does not exist by virtue of legislative enactment; rather Constitution sufficiently prescribes rules for the manner of exercise of the power); and AGO 77-65 (Ch. 120, F.S., inapplicable to Constitution Revision Commission established by Art. XI, s. 2, Fla. Const.). Compare *Turner v. Wainwright*, 379 So. 2d 148 (Fla. 1st DCA), affirmed and remanded, 389 So. 2d 1181 (Fla. 1980), holding that the Parole Commission [now known as the Florida Commission on Offender Review, see s. 1, Ch. 14-191, Laws of Florida] which Art. IV, s. 8(c), Fla. Const., recognizes may be created by law, is subject to s. 286.011, F.S.

However, Art. I, s. 24, Fla. Const., establishes a constitutional right of access to meetings of any collegial public body of the executive branch of state government by providing that such meetings must be open and noticed to the public unless exempted by the Legislature pursuant to Art. I, s. 24, Fla. Const., or specifically closed by the Constitution.

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1-B-4 | EX OFFICIO BOARD MEMBERS

An ex officio board member is subject to the Sunshine Law regardless of whether he or she is serving in a voting or non-voting capacity. AGO 05-18. Accord Inf. Op. to Ardaman, June 24, 2021 (mayor who serves as a non-voting ex officio member of various municipal boards is subject to the Sunshine Law). And see Linares v. District School Board of Pasco County, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available in the Cases database at the open government site at myfloridalegal.com (finding that the Sunshine Law applied equally to all members of an advisory committee, including a staff member appointed as a non-voting member of the committee whose role was only to advise the voting committee members).

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1-B-5 | FEDERAL ENTITIES

Federal agencies, i.e., agencies created under federal law, operating within the state, do not come within the purview of the state Sunshine Law. AGO 71-191. Thus, meetings of a federally-created council are not subject to s. 286.011, F.S. AGO 84-16.

However, if a board is created pursuant state law, the Sunshine Law applies even if federal officials serve on the board. See Inf. Op. to Markham, September 10, 1996 (technical oversight committee established by state agencies as part of settlement agreement in federal lawsuit subject to Sunshine Law); and Inf. Op. to Green, December 11, 1998 (tri-state river commission established pursuant to state and federal law is subject to the Sunshine Law). See also Inf. Op. to Knox, January 6, 2005 (St. Johns River Alliance, Inc., a non-profit corporation formed to help carry out the federal American Heritage Rivers Initiative and the associated intergovernmental Partnership Agreement among state, local and federal governmental entities, is subject to s. 286.011, F.S., requirements); and Roscow v. Abreu, No. 03-CA-1833 (Fla. 2d Cir. Ct. August 6, 2004), available in the Cases database at the open government site at myfloridalegal.com (committee created by the state department of transportation and composed of officials from state, local, and federal agencies was subject to the Sunshine Law because the committee was responsible for screening and evaluating potential corridors and alignments for a possible expansion of the Suncoast Parkway). Cf. Brown v. Denton, 152 So. 3d 8 (Fla. 1st DCA 2014) (closed-door federal mediation sessions which resulted in changes to pension benefits of city employees in certain unions constituted collective bargaining negotiations which should have been held in the Sunshine).

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1-B-6 | GOVERNOR AND CABINET

Article IV, s. 4 of the Florida Constitution, establishes "a cabinet composed of an attorney general, a chief financial officer, and a commissioner of agriculture." The Governor and Cabinet serve as the head of certain departments within the executive branch. In addition, the Governor and Cabinet have responsibilities that arise under the Constitution. See Art. IV, s. 8, Fla. Const. (clemency).

The Sunshine Law does not apply to those powers of the Governor and Cabinet which derive from the Constitution; thus, the Governor and Cabinet in dispensing pardons and the other forms of clemency authorized by Art. IV, s. 8(a), Fla. Const., are not subject to s. 286.011, F.S. Cf. *In re Advisory Opinion of the Governor*, 334 So. 2d 561 (Fla. 1976) (Constitution sufficiently prescribes rules for the manner of exercise of gubernatorial clemency power; legislative intervention is, therefore, unwarranted).

Section 286.011, F.S., however, does apply to those functions of the Governor and Cabinet which are statutory responsibilities as opposed to duties arising under the Constitution. Thus, the Governor and Cabinet are subject to the Sunshine Law when sitting in their capacity as a board created by the Legislature or whose powers are prescribed by the Legislature, such as the Board of Trustees of the Internal Improvement Trust Fund or the Florida Department of Law Enforcement. In such cases, the Governor and Cabinet are not exercising powers derived from the Constitution but are subject to the "dominion and control" of the Legislature.

Moreover, Art. I, s. 24, Fla. Const., requires that meetings of "any collegial public body of the executive branch of state government" be open and noticed to the public. The only exceptions to this constitutional right of access are those meetings which have been exempted by the Legislature pursuant to Art. I, s. 24, Fla. Const., or which are specifically closed by the Constitution. And see Article III s. 4(e), Fla. Const., providing, in relevant part that "all prearranged gatherings, between . . . the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public."

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1-B-7 | INDIVIDUAL BOARD MEMBERS

Section 286.011, F.S., applies to public boards and commissions, i.e., collegial bodies, and has been applied to meetings of "two or more members" of the same board or commission when discussing some matter which foreseeably will come before the board or commission. Therefore, the statute does not ordinarily apply to an individual member of a public board or commission or to public officials who are not board or commission members. See *National Council of Compensation Insurance v. Fee*, 219 So. 3d 172, 179 (Fla. 1st DCA 2017); and *Mitchell v. School Board of Leon County*, 335 So. 2d 354 (Fla. 1st DCA 1976). See also Inf. Op. to Dillener, January 5, 1990 (Sunshine Law not normally applicable to meeting of town council member with private citizens). Cf. *Jennings v. Dade County*, 589 So. 2d 1337 (Fla. 3d DCA 1991), review denied, 598 So. 2d 75 (Fla. 1992), stating that ex parte (i.e., from one side only) communications in quasijudicial proceedings raise a presumption that the contact was prejudicial to the decision-making process; and s. 286.0115, F.S., enacted in response to the Jennings case, relating to access to local public officials in quasi-judicial proceedings.

However, there have been circumstances where the application of the Sunshine Law to individual board members has been considered. As stated by the 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). And see AGO 89-39 (aides to county commissioners are not subject to the Sunshine law unless they have been delegated decision-making functions outside of the ambit of normal staff functions, are acting as liaisons between board members, or are acting in place of the board or its members at their direction).

a. Individual Board Member Meeting with a Member of Another Public Board

The Sunshine Law does not apply to a meeting between individuals who are members of different boards unless one or more of the individuals has been delegated the authority to act on behalf of his or her board. *Rowe v. Pinellas Sports Authority*, 461 So. 2d 72 (Fla. 1984). Accord AGO 84-16 (meeting between the chair of a private industry council created pursuant to federal law and the chair of a five-county employment and training consortium created pursuant to state law is not subject to Sunshine Law, unless there is a delegation of decision-making authority to the chair of the



consortium); and Inf. Op. to McClash, April 29, 1992 (Sunshine Law generally not applicable to county commissioner meeting with individual member of metropolitan planning organization). And see News-Press Publishing Company, Inc. v. Lee County, Florida, 570 So. 2d 1325 (Fla. 2d DCA 1990) (Sunshine Law not applicable to mediation proceeding attended by individual members of city and county boards who were in litigation because only one member of each board was present at the proceedings and no final settlement negotiations could be made during the mediation conference).

An individual city council member may, therefore, meet privately with an individual member of the municipal planning and zoning board to discuss a recommendation made by that board since two or more members of either board are not present, provided that no delegation of decision-making authority has been made and neither member is acting as a liaison. AGO 87-34. Accord AGOs 99-55 (school board member meeting with member of advisory committee established by school board), and 97-52 (discussions between individual member of community college board of trustees and school board member regarding acquisition of property by school board).

b. Mayor Meeting with Individual City Commissioner or City Council Member

If the mayor is a member of the council or has a voice in decision-making through the power to break tie votes, meetings between the mayor and a member of the city council to discuss some matter which will come before the city council are subject to the Sunshine Law. AGO 83-70. And see Inf. Op. to Ardaman, June 24, 2021 (Sunshine Law applies to discussions between a member of the city council and a mayor who serves as a non-voting member of the council).

On the other hand, if the mayor is not a member of the city council and does not possess any power to vote even in the case of a tie vote but possesses only the power to veto legislation, the mayor may privately meet with an individual member of the city council without violating the Sunshine Law, provided the mayor is not acting as a liaison between members and neither individual has been delegated the authority to act on behalf of the council. AGOs 90-26 and 85-36. And see Inf. Op. to Cassady, April 7, 2005 (mayor who is not a member of the city council and cannot vote even in the event of a tie, may meet with an individual council member to

discuss the mayor's recommendations to the council concerning prospective appointees). Cf. *City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989) (since mayor was responsible under the city charter for disciplining city employees, mayor in carrying out this function was not subject to s. 286.011, F.S.).

c. Use of Non-Board Members or Staff to Act as Liaisons or to Conduct a de facto Meeting of the Board

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 (the fact that a city council member has expressed his or her views or voting intent on an upcoming matter to a news reporter prior to the scheduled public meeting does not violate the Sunshine Law so long as the reporter is not being used by the member as an intermediary in order to circumvent the requirements of s. 286.011, F.S.). Compare, *State v. Dorworth*, No. 14-MM-5841 (Fla. Orange Co. Ct. October 21, 2014), affirmed, No. 14-AP-48 (Fla. 9th Cir. Ct. August 19, 2015), available in the Cases database at the open government site at myfloridalegal.com, dismissing a misdemeanor charge against a lobbyist who was accused of violating the Sunshine Law by relaying information between board members and thereby aiding the members to meet without complying with the Sunshine Law. The trial judge determined that by charging the lobbyist, the state attorney "expanded the reach of the Sunshine Law to private citizens; and, the Legislature did not intend for the statute to apply to private citizens."

However, because the Sunshine Law must be construed to "frustrate all evasive devices," the law is implicated by a meeting between a board member and a nonboard member who is being used as a liaison for board members. See *Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780 (Fla. 4th DCA 2018), citing to AGOs 96-35 (city manager may not ask each commissioner to state his or her position on a specific matter that will foreseeably be considered by the commission at a public meeting, in order to provide the information to the members of the commission) and 75-59 (city manager may meet individually with city council members "to discuss city business provided that the manager does not act



as a liaison for board members by circulating information and thoughts of individual councilmembers to the rest of the board").

Therefore, a city manager should refrain from asking each commissioner to state his or her position on a specific matter which will foreseeably be considered by the commission at a public meeting in order to provide the information to the members of the commission. AGO 89-23. See also Inf. Op. to Goren, October 28, 2009 (while individual city commissioners may seek advice or information from staff, city should be cognizant of the potential that commissioners seeking clarification by follow-up with staff when staff responses are provided to all commissioners could be considered to have participated in a de facto meeting of the commissioners by using staff as a conduit between commissioners). Compare *Sarasota Citizens for Responsible Government v. City of Sarasota*, supra at 765 (private staff meetings with individual county commissioners in preparation for a public hearing on a proposed memorandum of understanding [MOU] did not violate the Sunshine Law because the meetings were "informational briefings regarding the contents of the MOU" and "[t]here is no evidence that [county] staff communicated what any commissioner said to any other commissioner").

Additionally, in *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979), the court held that a series of scheduled successive meetings between the school superintendent and individual members of the school board were subject to the Sunshine Law. While normally meetings between the school superintendent and an individual school board member would not be subject to s. 286.011, F.S., these meetings were held in "rapid-fire succession" in order to avoid a public airing of a controversial redistricting problem. Thus, even though the superintendent was "adamant that he did not act as a go-between during these discussions and [denied] that he told any one board member the opinions of the others," the one-to-one meetings amounted to a de facto meeting of the school board in violation of s. 286.011, F.S. Id. at 580. See also *Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780 (4th DCA 2018) (evidence did not "conclusively refute" allegations that a series of telephone calls between the city attorney and individual city councilmembers to discuss termination of and severance pay to, the city manager did not constitute a Sunshine Law



violation; accordingly, trial court should not have entered summary judgment in favor of the city). Cf. *State v. Foster*, 12 F.L.W. Supp. 1194a (Fla. Broward Co. Ct. September 26, 2005). In *Foster*, the judge rejected the argument made by the commissioners, 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 denied the commissioners' motion for summary judgment and 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.

Similarly, in *Citizens for a Better Royal Palm Beach, Inc. v. Village of Royal Palm Beach*, No. CL 9114417 AA (Fla. 15th Cir. Ct. May 14, 1992), available in the Cases database at the open government site at myfloridalegal.com, the court invalidated a contract for the sale of municipal property when it determined that after the proposal to sell the property which had been discussed and approved at a public meeting collapsed, the city manager met individually with council members and from those discussions the property was sold to another group. The circuit court found that these meetings resulted in a substantial change in the terms of sale and that the execution of the contract, therefore, violated the Sunshine Law. See also *Sentinel Communications Company v. School Board of Osceola County*, No. CI92-0045 (Fla. 9th Cir. Ct. April 3, 1992), available in the Cases database at the open government site at myfloridalegal.com (series of private meetings between school superintendent and individual school board members to consider staff recommendations concerning administrative structure of the school system and to privately address any of the board's concerns, should have been held in the sunshine; while individual board members are not prohibited from meeting privately with staff or the superintendent for informational purposes or on an ad hoc basis, the Sunshine Law "shall be construed to prohibit the scheduling of a series of such meetings which concern a specific agenda"); and AGO 93-90 (board that is responsible for assessing the performance of its chief executive officer [CEO] should not use a review procedure in which individual board members evaluate the CEO's performance and send their



individual written comments to the board chair for compilation and subsequent discussion with the CEO).

Not all staff decisions, however, are required to be made or approved by a board. Thus, the district court concluded in *Florida Parole and Probation Commission v. Thomas*, 364 So. 2d 480 (Fla. 1st DCA 1978), that the decision to appeal made by legal counsel to a public board after discussions between the legal staff and individual members of that board was not subject to the Sunshine Law. And see *Inf. Op. to Biasco*, July 2, 1997 (administrative officers or staff who serve public boards should not poll board members on issues which will foreseeably come before the board although an administrative officer is not precluded from contacting individual board members for their views on a matter when the officer, and not the board, has been vested with the authority to take action).

d. Delegation of Authority to Individual to Act on Behalf of the Board

"The Sunshine Law does not provide for any 'government by delegation' exception; a public body cannot escape the application of the Sunshine Law by undertaking to delegate the conduct of public business through an alter ego." *IDS Properties, Inc. v. Town of Palm Beach*, 279 So. 2d 353, 359 (Fla. 4th DCA 1973), certified question answered sub nom., *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). See also *News-Press Publishing Company, Inc. v. Carlson*, 410 So. 2d 546, 547-548 (Fla. 2d DCA 1982) (when public officials delegate de facto authority to act on their behalf in the formulation, preparation, and promulgation of plans on which foreseeable action will be taken by those public officials, those delegated that authority stand in the shoes of such public officials insofar as the Sunshine Law is concerned).

In *News-Press Publishing Company v. Lee County*, 570 So. 2d 1325 (Fla. 2d DCA 1990), a newspaper challenged the trial court's decision to require the parties (two cities and a county) to participate in mediation and to each appoint a representative "with full authority to bind them." The judge then amended the order to allow the parties to limit the representatives' authority so that no final settlement decisions could be made during the mediation conference. On appeal, the district court concluded that the mediation's narrow scope did not give rise to a substantial delegation affecting the board's decision-making function so as to



require the mediation to be open to the public. 570 So. 2d at 1327. And see *Broward County v. Conner*, 660 So. 2d 288, 290 (Fla. 4th DCA 1995), review denied, 669 So. 2d 250 (Fla. 1996) (since Sunshine Law provides that actions of a public board are not valid unless they are made at an open public meeting, a county's attorneys would not be authorized to enter into a settlement agreement on the commission's behalf "without formal action by the county commission at a meeting as required by the statute"). Compare *Lee County v. Pierpont*, 693 So. 2d 994 (Fla. 2d DCA 1997), affirmed, 710 So. 2d 958 (Fla. 1998) (authorization to county attorney to make settlement offers to landowners not to exceed appraised value plus 20%, rather than a specific dollar amount, did not violate the Sunshine Law). Moreover, the Attorney General's Office has advised that a single member of a board who has been delegated the authority to negotiate the terms of a lease on behalf of the board "is subject to the Sunshine Law and, therefore, cannot negotiate for such a lease in secret." AGO 74-294. Accord AGO 84-54. Similarly, when an individual member of a public board, or a board member and the executive director of the board, conducts a hearing or investigatory proceeding on behalf of the entire board, the hearing or proceeding must be held in the sunshine. AGOs 75-41 and 74-84. And see AGO 10-15 (special magistrate subject to the Sunshine Law when exercising the delegated decision-making authority of the value adjustment board).

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However, if the board member has been authorized only to gather information or function as a fact-finder, the Attorney General's Office has concluded that the Sunshine Law does not apply. See e.g. AGOs 95-06, 93-78, and 90-17 (if board member is authorized only to explore various contract proposals,

with such proposals being related back to the governing body for consideration, the discussions between the board member and the applicant are not subject to the Sunshine Law). Cf. *State, Department of Management Services v. Lewis*, 653 So. 2d 467 (Fla. 1st DCA 1995) (issuance of an order of reconsideration by a board chair does not violate the Sunshine Law where the purpose of the order is to provide notice of a hearing to the parties and allow them an opportunity to provide argument on the issue).

More recently, the First District Court of Appeal ruled that a statute (s. 627.091[6], F.S.), requiring a "committee" of a national insurance rating organization to comply with the Sunshine Law when meeting to discuss the need to alter Florida rates, did not apply to an actuary who performed this function instead of a committee. *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 179 (Fla. 1st DCA 2017). In *Fee*, the court noted that the term "committee" has been defined as a "subordinate group," not a single person, and that "the multi-person concept of the term 'committee' further finds support in well-established precedent construing the Sunshine Law."

Moreover, if the individual, rather than the board, is vested by law, charter, or ordinance with the authority to take action, such discussions are not subject to s. 286.011, F.S. See *City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989) (since the mayor was responsible under the city charter for disciplining city employees and since the mayor was not a board or commission and was not acting for a board, meetings between the mayor and a city employee concerning the employee's duties were not subject to s. 286.011, F.S.). Cf. AGO 13-14 (where contract terms regarding the police chief's employment have been discussed and approved at a public city commission meeting, Sunshine Law does not require that the consistent written employment contract drafted by the town attorney as directed by the commission be subsequently presented to and approved at another commission meeting).

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1-B-8 | JUDICIARY

The open meetings provision found in Art. I, s. 24, Fla. Const., does not include meetings of the judiciary. In addition, separation of powers principles make it unlikely that the Sunshine Law, a legislative enactment, could apply to the courts established pursuant to Art. V, Fla. Const. AGO 83-97. Thus, questions of access to judicial proceedings usually arise under other constitutional guarantees relating to open and public judicial proceedings, Amend. VI, U.S. Const., and freedom of the press, Amend. I, U.S. Const.

However, a circuit conflict committee established by the Legislature to approve attorneys handling conflict cases is subject to the Sunshine Law, even though the chief judge or his or her designee is a member, because the "circuit conflict committees are created by the Legislature, subject to its dominion and control." AGO 83-97. And see *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973) (Sunshine Law applies to quasi-judicial functions; a board exercising quasi-judicial functions is not a part of the judicial branch of government).

a. Criminal Proceedings

A court possesses the inherent power to control the conduct of proceedings before it. *Miami Herald Publishing Company v. Lewis*, 426 So. 2d 1 (Fla. 1982); and *State ex rel. Miami Herald Publishing Company v. McIntosh*, 340 So. 2d 904 (Fla. 1976). A three-pronged test for closing criminal proceedings has been developed to provide "the best balance between the need for open government and public access, through the media, to the judicial process, and the paramount right of a defendant in a criminal proceeding to a fair trial before an impartial jury." *Lewis*, supra at 7. And see *Morris Publishing Group, LLC v. State*, 136 So. 3d 770, 779 (Fla. 1st DCA 2014); and *Miami Herald Media Company v. State*, 218 So. 3d 460 (Fla. 3d DCA 2017).

The factors to be considered are whether:

- 1) closure is necessary to prevent a serious and imminent threat to the administration of justice;
- 2) no alternatives are available, other than change of venue, which would protect the defendant's right to a fair trial; and



- 3) closure would be effective in protecting the defendant's rights without being broader than necessary to accomplish that purpose.

b. Civil Proceedings

Stressing that all trials, civil and criminal, are public events and that there is a strong presumption of public access to these proceedings, the Supreme Court in *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113 (Fla. 1988), set forth the following factors which must be considered by a court in reviewing a request for closure of civil proceedings:

- 1) a strong presumption of openness exists for all court proceedings;
- 2) both the public and news media have standing to challenge any closure order with the burden of proof being on the party seeking closure;
- 3) closure should occur only when necessary
 - a) to comply with established public policy as set forth in the Constitution, statutes, rules or case law;
 - b) to protect trade secrets;
 - c) to protect a compelling governmental interest;
 - d) to obtain evidence to properly determine legal issues in a case;
 - e) to avoid substantial injury to innocent third parties; or
 - f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.
- 4) whether a reasonable alternative is available to accomplish the desired result and if none exists, the least restrictive closure necessary to accomplish its purpose is used;
- 5) the presumption of openness continues through the appellate review process and the party seeking closure continues to have the burden to justify closure.



And see Amendments to the Florida Family Law Rules of Procedure, 723 So. 2d 208, 209 (Fla. 1998), reiterating support for the Barron standards and stating that “public access to court proceedings and records [is] important to assure testimonial trustworthiness; in providing a wholesome effect on all officers of the court for purposes of moving those officers to a strict conscientiousness in the performance of duty; in allowing nonparties the opportunity of learning whether they are affected; and in instilling a strong confidence in judicial remedies, which would be absent under a system of secrecy;” and *Lake v. State*, 193 So. 3d 932, 934 (Fla. 4th DCA 2016) (trial court did not depart from essential requirements of law by refusing to close Jimmy Ryce Act civil commitment review proceeding; statutory provision requiring that certain treatment records introduced into evidence be maintained under seal unless opened by the judge “does not require that the press and public be barred from any discussion of treatment or treatment records during a review hearing”).

c. Depositions

While the courts have recognized that court proceedings are public events and the public generally has access to such proceedings, the general public and the press do not have a right under the First Amendment or the rules of procedure to attend discovery depositions. See *Palm Beach Newspapers, Inc. v. Burk*, 504 So. 2d 378, 380 (Fla. 1987), cert. denied, 108 S.Ct. 346 (1987), stating that while discovery depositions in criminal cases are judicially compelled for the purpose of allowing parties to investigate and prepare, they are not judicial proceedings. Accord *Post-Newsweek Stations, Florida, Inc. v. State*, 510 So. 2d 896 (Fla. 1987) (media not entitled to notice and opportunity to attend pretrial discovery depositions in criminal cases); and *SCI Funeral Services of Florida, Inc. v. Light*, 811 So. 2d 796 (Fla. 4th DCA 2002) (upholding protective order closing depositions to the media based on privacy concerns). Cf. *Lewis v. State*, 958 So. 2d 1027 (Fla. 5th DCA 2007) (while *Burk* applied to unfiled depositions made during an ongoing, active criminal prosecution, materials related to defendant’s prosecution, including depositions, are subject to disclosure after the case becomes final).



d. Florida Bar Grievance Proceedings

An attorney's claim that the Florida Bar violated the Sunshine Law by refusing to allow him to attend a grievance committee meeting of the Bar was rejected in *Florida Bar v. Committee*, 916 So. 2d 741, 744-745 (Fla. 2005): "The grievance committee meetings of the Bar are private, and therefore the Bar is justified in prohibiting [the attorney] from attendance." The Court reiterated its statement from *The Florida Bar: In re Advisory Opinion*, 398 So. 2d 446, 447 (Fla. 1981), that "[n]either the legislature nor the governor can control what is purely a judicial function."

e. Grand Juries

Section 905.24, F.S., provides that "[g]rand jury proceedings are secret"; thus, these proceedings are not subject to s. 286.011, F.S. See *Clein v. State*, 52 So. 2d 117, 120 (Fla. 1950) (it is the policy of the law to shield the proceedings of grand juries from public scrutiny); and *In re Getty*, 427 So. 2d 380, 383 (Fla. 4th DCA 1983) (public disclosure of grand jury proceedings "could result in a myriad of harmful effects"). The grand jury has also been referred to as a "coordinate branch of the judiciary, and as an arm, appendage, or adjunct of the circuit court." *State ex rel. Christian v. Rudd*, 302 So. 2d 821, 828 (Fla. 1st DCA 1974). Cf. *Butterworth v. Smith*, 110 S.Ct. 1376 (1990), striking down a Florida statute to the extent that it prohibited a witness from disclosing his own testimony before a grand jury after the grand jury's term has ended.

In addition, hearings on certain grand jury procedural motions are closed. The procedural steps contemplated in s. 905.28(1), F.S., for reports or presentments of the grand jury relating to an individual which are not accompanied by a true bill or indictment, are cloaked with the same degree of secrecy as is enjoyed by the grand jury in the receipt of evidence, its deliberations, and final product. Therefore, a newspaper has no right of access to grand jury procedural motions and to the related hearing. *In re Grand Jury*, Fall Term 1986, 528 So. 2d 51 (Fla. 2d DCA 1988). And see *Palm Beach Newspapers, Inc., v. Doe*, 460 So. 2d 406 (Fla. 4th DCA 1984) (hearing ancillary or related to a grand jury session constitutes a proceeding which comes within the protection of s. 905.24); and *In re Subpoena to Testify Before Grand Jury Directed to Custodian of Records*, 864 F.2d 1559 (11th Cir.



1989) (while a court must hold a hearing and give reasons for closure of criminal court proceedings, a court is not required to give newspapers a hearing and give reasons for closure of grand jury proceedings).

f. Judicial Nominating Commissions/Judicial Qualifications Commission

Judicial nominating commissions for the Supreme Court of Florida, the district courts of appeal, or for a judicial circuit for the trial courts within the circuit are not subject to the Sunshine Law. *Kanner v. Frumkes*, 353 So. 2d 196 (Fla. 3d DCA 1977). Article V, s. 11(d), Fla. Const., however, requires that except for its deliberations, the proceedings of a judicial nominating commission and its records are open to the public. While the deliberations of a commission are closed, such a limitation appears to be applicable to that point in the proceedings when the commissioners are weighing and examining the reasons for and against a choice. Inf. Op. to Russell, August 2, 1991.

The statewide judicial nominating commission for workers' compensation judges, however, is not a judicial nominating commission as contemplated by the Constitution; thus, such a commission created pursuant to the workers' compensation law is subject to s. 286.011, F.S. AGO 90-76.

proceedings of the Judicial Qualifications Commission are confidential. However, upon a finding of probable cause and the filing of formal charges against a judge or justice by the commission with the Clerk of the Supreme Court, all further proceedings of the commission are public. Article V, s. 12(a)(4), Fla. Const.

g. Mediation Proceedings

(1) Court-Ordered Mediation

Court-ordered mediation and arbitration are to be conducted according to the rules of practice and procedure adopted by the Florida Supreme Court. Sections 44.102(1) and 44.103(1), F.S. And see rule 10.360(a), Florida Rules For Certified and Court-Appointed Mediators ("A mediator shall maintain confidentiality of all information revealed during mediation except where disclosure is required or permitted by law or is agreed to by all parties."). (e.s.) Cf. Everglades Law Center,

Inc. v. South Florida Water Management District, 290 So. 3d 123 (Fla. 4th DCA 2019), noting that written mediation communications are confidential pursuant to ss. 44.103(3) and 44. 405(1), F.S., and must be redacted from the full transcript of a closed litigation session when it becomes public pursuant to s. 286.011(8), F.S.

Public access to court-ordered mediation proceedings between two cities and a county was raised in News-Press Publishing Company, Inc. v. Lee County, Florida, 570 So. 2d 1325 (Fla. 2d DCA 1990). Initially, the judge required the parties to have present a representative "with full authority to bind them"; however, after the media objected to the closure of the mediation proceeding, the judge amended the order to limit the representatives' authority so that no final settlement decisions could be made during the mediation conference. On appeal, the district court noted that no two members of any of the public boards would be present at the mediation proceedings and that the mediation's narrow scope did not give rise to a substantial delegation affecting the boards' decision-making function so as to require the mediation to be open to the public. 570 So. 2d at 1327. Cf. Brown v. Denton, 152 So. 3d 8 (Fla. 1st DCA 2014) (closed-door federal mediation sessions which resulted in changes to pension benefits of city employees in certain unions constituted collective bargaining negotiations which should have been held in the Sunshine; "[w]e cannot condone hiding behind federal mediation, whether intentionally or unintentionally, in an effort to thwart the requirements of the Sunshine Law.").

Similarly, in O'Connell v. Board of Trustees, 1 F.L.W. Supp. 285 (Fla. 7th Cir. Ct. Feb. 9, 1993), the court noted that as to public agencies, mediation is subject to the Sunshine Law; thus, no more than one member of a collegial body should attend the mediation conference. And see Fla. R. Civ. P. 1.720(d), stating that "[i]f a party to mediation is a public entity required to operate in compliance with chapter 286, Florida Statutes, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to



recommend settlement to the appropriate decision-making body of the entity." Accord Fla. R. App. P. 9.720(a).

(2) Other Mediation Proceedings

Mediation meetings conducted pursuant to the Florida Governmental Conflict Resolution Act, ss. 164.101-164.1061, F.S., which involve officials or representatives of local governmental entities who have the authority to negotiate on behalf of that governmental entity are subject to the Sunshine Law. Inf. Op. to McQuagge, February 13, 2002. Similarly, a closed attorney-client session may not be held to discuss settlement negotiations on an issue that is the subject of ongoing mediation pursuant to a partnership agreement between a water management district and others which is not in litigation. AGO 06-03.

h. Statutes Providing for Closed Court Proceedings

Certain court proceedings may be closed in accordance with Florida Statutes as follows:

(1) Adoption:

Hearings held under the Florida Adoption Act are closed. Section 63.162(1), F.S. See *In re Adoption of H.Y.T.*, 458 So. 2d 1127 (Fla. 1984) (statute providing that all adoption hearings shall be held in closed court is not unconstitutional).

(2) Dependency:

Except as provided in s. 39.507, F.S., dependency adjudicatory hearings are open to the public unless, by special order, the court determines that the public interest or welfare of the child is best served by closing the hearing. Section 39.507(2), F.S. And see *Mayer v. State*, 523 So. 2d 1171 (Fla. 2d DCA), review dismissed, 529 So. 2d 694 (Fla. 1988) (former version of statute requiring hearings to be closed did not violate First Amendment).

(3) Guardian Advocate Appointments:

Hearings for appointment of guardian advocates are confidential. Section 39.827(4), F.S.

(4) HIV Test Results:

Court proceedings in cases where a person is seeking access to human immunodeficiency virus (HIV) test results are to be conducted in camera unless the person tested agrees to a hearing in open court or the court determines that a public hearing is necessary to the public interest and proper administration of justice. Section 381.004(2)(e)9., F.S.

(5) Pregnancy Termination Notice Waiver:

Hearings conducted in accordance with a petition for a waiver of the notice requirements pertaining to a minor seeking to terminate her pregnancy shall remain confidential and closed to the public, as provided by court rule. Section 390.01114(6)(f), F.S.

(6) Termination of Parental Rights:

Hearings involving termination of parental rights are confidential and closed to the public. Section 39.809(4), F.S. See *Natural Parents of J.B. v. Florida Department of Children and Family Services*, 780 So. 2d 6 (Fla. 2001), upholding the constitutionality of the statute. And see *J.I. v. Department of Children and Families*, 922 So. 2d 405 (Fla. 4th DCA 2006) (Sunshine Law does not apply to Department of Children and Families permanency staffing meetings conducted to determine whether to file petition to terminate parental rights). Cf. *Stanfield v. Florida Department of Children and Families*, 698 So. 2d 321 (Fla. 3d DCA 1997) (trial court may not issue "gag" order preventing a woman from discussing a termination of parental rights case because "[t]he court cannot prohibit citizens from exercising their First Amendment right to publicly discuss knowledge that they have obtained independent of court documents even though the information may mirror the information contained in court documents").



(7) Victim and Witness Testimony in Certain Circumstances:

Except as provided in s. 918.16(2), F.S., if any person under 16 years of age or any person with an intellectual disability is testifying in any civil or criminal trial concerning any sex offense, the judge shall clear the courtroom, except for listed individuals. Section 918.16(1), F.S. If the victim of a sex offense is testifying concerning that offense, the court shall clear the courtroom, except for listed individuals, upon request of the victim, regardless of the victim's age or mental capacity. Section 918.16(2), F.S. Cf. *Pritchett v. State*, 566 So. 2d 6 (Fla. 2d DCA), review denied, 570 So. 2d 1306 (Fla. 1990) (where a trial court failed to make any findings to justify closure, application of s. 918.16, F.S., to the trial of a defendant charged with capital sexual battery violates the defendant's constitutional right to a public trial). Accord *Kovaleski v. State*, 854 So. 2d 282 (Fla. 4th DCA 2003), cause dismissed, 860 So. 2d 978 (Fla. 2003).

For a more complete listing of statutory exemptions, please see Appendix D and the Index.

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1-B-9 | LEGISLATURE

Article I, s. 24, Fla. Const., requires that meetings of the Legislature be open and noticed as provided in Art. III, s. 4(e), Fla. Const., except with respect to those meetings exempted by the Legislature pursuant to Art. I, s. 24, Fla. Const., or specifically closed by the Constitution. And see Art. III, s. 4(c), Fla. Const. (votes of members during final passage of legislation pending before a committee and, upon request of two members of a committee or subcommittee, on any other question, must be recorded).

Pursuant to Art. III, s. 4(e), Fla. Const., the rules of procedure of each house of the Legislature must provide that all legislative committee and subcommittee meetings of each house and joint conference committee meetings be open and noticed. Such rules must also provide:

[A]ll prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public. All open meetings shall be subject to order and decorum. This section shall be implemented and defined by the rules of each house, and such rules shall control admission to the floor of each legislative chamber and may, where reasonably necessary for security purposes or to protect a witness appearing before a committee, provide for the closure of committee meetings. Each house shall be the sole judge for the interpretation, implementation, and enforcement of this section.

In accordance with Article III, s. 4(e), both the Senate and the House of Representatives have adopted rules implementing this section. Senate Rules may be found online at flsenate.gov. Rules of the House of Representatives may be found at myfloridahouse.gov.

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1-B-10 | MARRIED COUPLE SERVING ON THE SAME BOARD

There is no per se violation of the Sunshine Law for a husband and wife to serve on the same public board or commission so long as they do not discuss board business without complying with the requirements of s. 286.011, F.S. AGO 89-06.

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1-B-11 | PRIVATE ORGANIZATIONS

The Attorney General's Office has recognized that private organizations generally are not subject to the Sunshine Law unless the private organization has been created by a public entity, has been delegated the authority to perform some governmental function, or plays an integral part in the decision-making process of a public entity. AGO 07-27.

However, as discussed below, the Sunshine Law applies to private entities created by law or by public agencies, and to private entities providing services to governmental agencies and acting on behalf of those agencies in the performance of their public duties.

a. Private Entities Created Pursuant to Law or by Public Agencies

The Supreme Court has stated that "[t]he Legislature intended to extend application of the 'open meeting' concept so as to bind every 'board or commission' of the state, or of any county or political subdivision over which [the Legislature] has dominion or control." *City of Miami Beach v. Berns*, 245 So. 2d 38, 40 (Fla. 1971).

Accordingly, if a private entity has been created by law or by a public agency to perform a public function, the Sunshine Law applies. See *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 180 (Fla. 1st DCA 2017), noting the application of the Sunshine Law to governmental bodies and to private entities created by a public entity. Accord AGO 00-08 ("a board or commission created by a public agency or entity is subject to section 286.011, Florida Statutes").

For example, in AGO 04-44, the Attorney General advised that a nonprofit corporation established by state law to manage corrections work programs of the Department of Corrections, was subject to the Sunshine Law. And see AGOs 98-42 (association legislatively designated as the governing organization of athletics in Florida public schools), 97-17 (not-for-profit corporation created by a city redevelopment agency to assist in the implementation of its redevelopment plan), and 16-01 and 98-01 (board of trustees of an insurance trust fund created pursuant to collective bargaining agreement between a city and the employee union). Cf. s. 20.41(6) and (8), F.S., providing that area agencies on aging, described as "nongovernmental, independent, not-for-profit

corporations" are "subject to [the Public Records Act], and, when considering any contracts requiring the expenditure of funds, are subject to ss. 286.011-286.012, relating to public meetings."

b. Private Entities Providing Services to Public Agencies

A private corporation performing services for a public agency and receiving compensation for such services is not by virtue of this relationship alone subject to the Sunshine Law unless the public agency's governmental or legislative functions have been delegated to it. *McCoy Restaurants, Inc. v. City of Orlando*, 392 So. 2d 252 (Fla. 1980) (airlines are not by virtue of their lease with the aviation authority public representatives subject to the Sunshine Law). And see AGOs 98-47 (Sunshine Law does not apply to private nongovernmental organization when the organization counsels and advises private business concerns on their participation in a federal loan program made available through a city). 80-45 (the receipt of Medicare, Medicaid, government grants and loans, or similar funds by a private nonprofit hospital does not, standing alone, subject the hospital to the Sunshine Law); and Inf. Op. to Gaetz and Coley, December 17, 2009 (mere receipt of federal grant does not subject private economic development organization to Sunshine Law).

However, although private entities are generally not subject to the Sunshine Law simply because they do business with public agencies, the Sunshine Law can apply if a public entity has delegated "the performance of its public purpose" to a private entity. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So. 2d 373, 382-383 (Fla. 1999). *Accord National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 180 (Fla. 1st DCA 2017); and *Holifield v. Big Bend Cares, Inc.*, 326 So. 3d 739 (Fla. 1st DCA 2021).

For example, in *Keesler v. Community Maritime Park Associates, Inc.*, 32 So. 3d 659, 660 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1289 (Fla. 2010), the court deemed it "undisputed" that a not-for-profit corporation charged by the City of Pensacola with overseeing the development of public waterfront property "is subject to the requirements of the Sunshine Law."

Similarly, the Attorney General's Office has found meetings of the following entities to be subject to the Sunshine Law:



Family Services Coalition, Inc., board of directors, performing services for the Department of Children and Families which services would normally be performed by the department, AGO 00-03; Astronauts Memorial Foundation when performing duties funded under the General Appropriations Act, AGO 96-43; nonprofit organization designated by county to fulfill role of county's dissolved cultural affairs council, AGO 98-49; nonprofit corporation specifically created to contract with county for operation of a public golf course on county property acquired by public funds, AGO 02-53; downtown redevelopment task force which, although not appointed by city commission, stood in place of the city commission when considering downtown improvement issues, AGO 85-55; and a private nonprofit corporation, if the county accepts the corporation's offer to review, recodify, and prepare draft amendments to the county zoning code, AGO 83-95. Cf. Inf. Op. to Bedell, December 28, 2005 (private nonprofit organization which entered into an agreement with a city to operate a theater, received city funding in the form of a loan for this purpose, and leased property from the city, should comply with the Sunshine Law when holding discussions or making decisions regarding the theater).

More recently, the First District determined a national insurance rating organization with statutory responsibility to file proposals for changes in Florida rates was not subject to the Sunshine Law. The court determined that the state insurance agency retained the responsibility to approve or disapprove rates and "did not delegate any authority to carry out an agency function required to be performed in the sunshine." *National Council on Compensation Insurance v. Fee*, 219 So. 3d 172, 180 (Fla. 1st DCA 2017). See also *Holifield v. Big Bend Cares, Inc.*, 326 So. 3d 739 (Fla. 1st DCA 2021) (private entity that entered into a contract with a state agency to perform certain services was not subject to the Sunshine Law because the public entity did not delegate the performance of its public purpose to the private corporation).

c. Application of the Sunshine Law to specific private entities

(1) Direct-Support Organizations

In AGO 05-27, after reviewing the responsibilities of a nonprofit corporation created pursuant to statute as a

direct-support organization and the organization's relationship to the public agency, the Attorney General's Office concluded that the organization was subject to the Sunshine Law. See also Inf. Op. to Chiumento, June 27, 1990 (Sunshine Law applies to school district direct-support organizations created pursuant to statute; although the direct-support organizations "constitute private nonprofit corporations, they seek to assist the district school board in carrying out its functions of meeting the educational needs of the students in the county"). And see AGOs 92-53 (John and Mable Ringling Museum of Art Foundation, Inc., established pursuant to statute as a not-for-profit corporation to assist the museum in carrying out its functions subject to Sunshine Law), and 11-01 (Sunshine Law applies to Biscayne Park Foundation, Inc., created as a nonprofit foundation to act as an instrumentality on behalf of the Village of Biscayne Park and intended to enhance the Village's opportunities to raise monies through special events, sponsorships, donations, and grants for the Village).

The Legislature has specifically exempted portions of meetings of some direct-support organizations. For example, any portion of a meeting of the board of directors of a university direct-support organization, or of the executive committee or other committee of the board, at which any proposal seeking research funding from the organization or a plan or program for either initiating or supporting research is discussed is exempt from s. 286.011, F.S. Section 1004.28(5) (c), F.S. See also s. 292.055(9), F.S. (portions of meetings of Department of Veterans' Affairs direct support organization during which the identity of a donor or potential donor who wishes to remain anonymous is discussed are exempt).

(2) Economic Development Organizations

Several Attorney General Opinions have considered whether the Sunshine Law applies to private economic development organizations. These opinions have concluded that the Sunshine Law applies when there has been a delegation of a public agency's authority to conduct public business such as carrying out the terms of the

county's economic development strategic plan. AGO 10-30. See also AGO 10-44 (Sunshine Law applies to nonprofit corporation delegated authority to carry out the terms of the county's green economic development plan). Compare Inf. Op. to Gaetz and Coley, December 17, 2009 (open government laws did not apply to private economic development corporation since no delegation of a public agency's governmental function was apparent and the corporation did not appear to play an integral part in the decision-making process of the agency). Cf. *Economic Development Commission v. Ellis*, 178 So. 3d 118, 123 (Fla. 5th DCA 2015) (trial court erred by using the "delegation of function" test to conclude that a private entity under contract with a county to provide economic development services was subject to the Public Records Act because there was "not a clear, compelling, complete delegation of a governmental function" to the entity; instead, the court should have used the "totality of factors" test to make this determination). For more information on the "delegation of function" and "totality of factors" tests, please refer to the discussion on pages 62-64.

(3) Homeowners' Associations

The Sunshine Law does not generally apply to meetings of a homeowners' association board of directors. Inf. Op. to Fasano, June 7, 1996. Other statutes govern access to records and meetings of these associations. See, e.g., s. 720.303(2), F.S. (homeowners' association board of directors); s. 718.112(2)(c), F.S. (condominium board of administration); s. 719.106(1)(c), F.S. (cooperative board of administration); and s. 723.078(2)(c), F.S. (mobile home park homeowners' association board of directors). Cf. AGOs 99-53 (an architectural review committee of a homeowners' association is subject to the Sunshine Law where that committee, pursuant to county ordinance, must review and approve applications for county building permits), and 07-44 (property owners association subject to open government laws when acting on behalf of a municipal services taxing unit).

(4) Political Parties

Meetings of political parties are not subject to s. 286.011, F.S. Inf. Op. to Armesto, September 18, 1979.



(5) Volunteer Fire Departments

In AGO 04-32, the Attorney General advised that boards of directors of volunteer fire departments that provide firefighting services to the county and use facilities and equipment acquired with county funds are subject to the Sunshine Law. Cf. AGO 00-08 (meetings of Lee County Fire Commissioner's Forum, a nonprofit corporation created by fire districts operating in Lee County, at which two or more members of the same district board discuss matters that may foreseeably come before the board for official action are subject to the Sunshine Law). And see *Schwartzman v. Merritt Island Volunteer Fire Department*, 352 So. 2d 1230 (Fla. 4th DCA 1977), cert. denied, 358 So. 2d 132 (Fla. 1978) (private nonprofit volunteer fire department, which had been given stewardship over firefighting, which conducted its activities on county-owned property, and which was funded in part by public money, was an "agency" for purposes of the Public Records Act, and its membership files, minutes of its meetings and charitable activities were subject to disclosure).

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1-B-12 | STAFF MEMBER OR PUBLIC OFFICIAL ALSO SERVING AS MEMBER OF PUBLIC BOARD

In some cases, staff members or public officials also serve as members of public boards. If so, discussions between those board members that involve matters which foreseeably could come before the board must be held in the Sunshine. For example, a 1993 Attorney General Opinion concluded that communications between the sheriff and the state attorney, as members of the county's criminal justice commission, would be subject to the Sunshine Law when such discussions involve matters which foreseeably would come before the commission. AGO 93-41. Cf. AGO 11-04, noting that if the state attorney and sheriff elect to appoint individuals to serve on a county criminal justice commission in the place of each officer, as authorized by county ordinance, neither the state attorney nor the sheriff would be a member of the commission so as to make these communications subject to the Sunshine Law. See now, s. 286.01141, F.S. (2013), creating a Sunshine Law exemption for that portion of a meeting of a duly constituted local advisory criminal justice commission at which members of the commission discuss active criminal intelligence or investigative information that is currently being considered by or which may foreseeably come before the commission, provided that public disclosure of the discussion is made at any public meeting of the commission at which the matter is being considered.

However, the Sunshine Law is applicable only to discussions of matters which may foreseeably come before the board. For example, the Sunshine Law would not apply to meetings between the mayor and city commissioners where a mayor performs the duties of city manager and the city commissioners individually serve as the head of a city department when the meeting is held solely by these officers in their capacity as department heads for the purpose of coordinating administrative and operational matters between executive departments of city government for which no formal action by the governing body is required or contemplated. Those matters which normally come before, or should come before, the city commission for discussion or action, however, must not be discussed at such meetings. AGO 81-88. Accord AGOs 83-70 and 75-210 (mayor may discuss matters with individual city council member which concern his or her administrative functions and would not come before the council for consideration and further action).

Similarly, the Sunshine Law would not apply to a school faculty meeting simply because two or more members of school advisory



council who are also faculty members attend the faculty meeting as long as council members refrain from discussing matters that may come before the council for consideration. Inf. Op. to Hughes, February 17, 1995; and Inf. Op. to Boyd, March 14, 1994.

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FLORIDA'S SUNSHINE MANUAL

AUTHOR: Florida's Office of the Attorney General

DATE: March 9, 2023

PART: 1 GOVERNMENT IN THE SUNSHINE LAW

SUBPART: C WHAT MEETINGS OF MEMBERS OF BOARDS ARE
COVERED? APPLICATION OF THE SUNSHINE LAW TO

SECTIONS: 1-C-1 through 1-C-16

LINK: [TextBookDiscrimination.com/Handbooks/PublicRecords/FL/S1C](https://www.TextBookDiscrimination.com/Handbooks/PublicRecords/FL/S1C)



1-C-1 | BOARD MEMBERS ATTENDING MEETINGS OR SERVING AS MEMBERS OF ANOTHER PUBLIC BOARD

a. Board Members Attending Meetings of Another Public Board

Several Attorney General Opinions have considered whether one or more members of a board may attend or participate in a meeting of another public board. For example, 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."

Moreover, 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. Accord AGO 98-79 (city commissioner may attend a public community development board meeting held to consider a proposed city ordinance and express his or her views on the proposed ordinance even though other city commissioners may be in attendance; however, the city commissioners in attendance may not engage in a discussion or debate among themselves because "the city commission's discussions and deliberations on the proposed ordinance must occur at a duly noticed city commission meeting"). See also AGOs 05-59 and 77-138.

b. Board Members Serving as Members of Another Public Board

Board members who also serve on a second public board may participate in the public meetings of the second board held in accordance with s. 286.011, F.S., and express their opinions without violating the Sunshine Law. AGO 07-13. In other words, "when two county commissioners are presently serving on [a regional planning] council this does not turn a meeting of the planning council into a county commission meeting, and the Sunshine Law does not require any additional or different notice of planning council meetings because of the presence of these county commission members." Id.



Similarly, AGO 98-14 concluded that membership of three city council members on the metropolitan planning organization did not turn a council meeting into a metropolitan planning organization meeting that required separate notice. Because, however, the discussion of metropolitan planning organization matters was planned for the council meeting, the city council had properly included mention of such items in its notice of the council meeting.

Additionally, in AGO 91-95, the Attorney General's Office concluded that a county commissioner may attend and participate in the discussion at a public meeting held by the governing board of a county board on which another commissioner serves. However, "in an effort to satisfy the spirit of the Sunshine Law," the opinion also recommended that the published notice of the county board "include mention of the anticipated attendance and participation of county commission members in board proceedings." Id.

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1-C-2 | BOARD MEMBER MEETING WITH HIS OR HER ALTERNATE

Since the alternate is authorized to act only in the absence of a board or commission member, there is no meeting of two individuals who exercise independent decision-making authority at the meeting. There is, in effect, only one decision-making official present. Therefore, a meeting between a board member and his or her alternate is not subject to the Sunshine Law. AGO 88-45.

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1-C-3 | 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. Compare Inf. Op. to Jove, January 12, 2009, concluding 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 s. 286.011, F.S.

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. And see AGO 08-18 (participation by two city council members in a citizens police academy does not violate the Sunshine Law; "[t]he educational course is not changed into a meeting of a board or commission . . . by the attendance and participation of members of the city council in the course work of the academy").

However, caution should be exercised to avoid situations in which private political or community forums may be used to circumvent the statute's requirements. AGO 94-62. See *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974) (Sunshine Law must be construed "so as to frustrate all evasive devices"). For example, in *State v. Foster*, 12 F.L.W. Supp. 1194a (Fla. Broward Co. Ct. September 26, 2005), the court rejected the city commissioners' argument that the Sunshine Law permitted them 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. Instead, the court denied the commissioners' motion for summary judgment and 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), available online in the Cases database at the open government site at



myfloridalegal.com. The trial judge found that the commissioners' participation in the discussions was particularly troubling because they continued to attend, despite Sunshine Law concerns expressed by the city attorney.

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1-C-4 | CONFIDENTIAL RECORDS DISCUSSIONS

The Florida Supreme Court has stated that in the absence of a statute exempting a meeting in which privileged material is discussed, s. 286.011, F.S., should be construed as containing no exceptions. *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971).

The Public Records Act was amended in 1991 after several district courts held that certain proceedings could be closed when considering confidential material. Section 119.07(7), F.S., provides that an exemption from s. 119.07, F.S., "does not imply an exemption from s. 286.011. The exemption from s. 286.011 must be expressly provided." Thus, exemptions from the Public Records Act do not by implication allow a public agency to close a meeting where exempt records are to be discussed in the absence of a specific exemption from the Sunshine Law. See AGOs 10-04 and 91-75 (school board), 04-44 (PRIDE), 93-41 (county criminal justice commission), and 91-88 (pension board).

For example, while s. 288.075(2), F.S., allows a private corporation to request confidentiality for certain records relating to a planned corporate relocation to Florida, this exemption "applies only to records and does not constitute an exemption from the provisions of the Government in the Sunshine Law...." AGO 04-19. Accord AGO 80-78 and Inf. Op. to Rooney, June 8, 2011.

In AGO 05-03, the Attorney General advised that a federal law prohibiting disclosure of certain identifying information did not authorize a state committee to close its meetings, although the committee should take steps to ensure that identifying information is not disclosed at such meetings. And see AGO 12-20 (county transportation board designated as "appropriate local official" authorized by statute to receive and investigate whistle-blower complaints must comply with the open meetings requirements in the Sunshine Law; however, the board must also "protect the confidential information it is considering at a meeting and must not disclose the name of the whistle-blower unless one of the specific circumstances listed in the statute is present). Cf. AGO 96-40 (town may not require a complainant to sign a waiver of confidentiality before accepting a whistle-blower's complaint for processing since the Legislature has provided for confidentiality of the whistle-blower's identity).



Similarly, in AGO 96-75, the Attorney General's Office advised that since under s. 286.011(8), F.S., the transcript of a closed attorney-client session is open to public inspection once the litigation is concluded, the city and its attorney should be sensitive to any discussions of confidential medical reports during such a meeting and take precautions to protect the confidentiality of such medical reports so that when the transcript is opened for inspection, the privacy of the employee will not be breached. Compare *Everglades Law Center, Inc. v. South Florida Water Management District*, 290 So. 3d 123 (Fla. 4th DCA 2019), noting that the statements made in AGO 96-75, regarding taking steps to protect confidentiality and privacy applied to "an individual's medical record in the context of a workers' compensation claim," and did not address "the confidentiality of mediation communications involving information regarding multiple persons," these mediation communications are confidential pursuant to ss. 44.102(3) and 44.405(3), F.S., and should be redacted from the full public transcript. [Emphasis supplied by the court].

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1-C-5 | 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), available online in the Cases database at the open government site at myfloridalegal.com. See also AGO 89-39 (members of a public board may not use computers to conduct private discussions among themselves about board business).

Similarly, city commissioners may not use an electronic newsletter to communicate among themselves on issues that foreseeably may come before the commission. *Inf. Op. to Syrkus*, October 31, 2000. And see AGO 09-19 (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); and *Inf. Op. to Martelli*, July 20, 2009 (authority should discuss business at publicly noticed meetings "rather than in a series of letters between authority members"). Cf. *Inf. Op. to Galaydick*, October 19, 1995 (school board members may share laptop computer even though computer's hard drive contains information reflecting ideas of an individual member as long as computer is not being used as a means of communication between members).

Thus, 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. *Inf. Op. to Blair*, May 29, 1973. And see *Leach-Wells v. City of Bradenton*, 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999) (selection committee created by city council to evaluate proposals violated the Sunshine Law when the city clerk unilaterally ranked the proposals based on the committee members' individual written evaluations; the court held that "the short-listing was formal action that was required to be taken at a public meeting"); *Schweickert v. Citrus County Port Authority*, No. 12-CA-1339 (Fla. 5th Cir. Ct. September 30, 2013), available online in the Cases database at the open government site at

myfloridalegal.com (ad hoc committee appointed by board violated the Sunshine Law when the members submitted individual written evaluations of the proposals to the staff, which then compiled the scores and ranked the proposals for submission to the board; the committee should have ranked the proposals at a public meeting); and AGO 93-90 (board not authorized to use employee evaluation procedure whereby individual board members send their individual written comments to the board chair for compilation and subsequent private discussion with the employee). Compare *Carlson v. Department of Revenue*, 227 So. 3d 1261 (Fla. 1st DCA 2017) (state agency "evaluation team" members who individually evaluated competing proposals, individually assigned scores, and individually submitted their scores for consideration by others, did not take "formal action" and thus were not obligated to conduct a meeting subject to 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. AGO 89-23. And see AGO 01-20 (e-mail communication of information from one council member to another is a public record but 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). Cf. Inf. Op. to Kessler, November 14, 2007 (procedural rule requiring county commissioner to make a written request to commission chair to withdraw an item from the consent agenda does not violate the Sunshine Law).

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 subject to s. 286.011, F.S. AGO 90-03. Similarly, in AGO 96-35, the Attorney General's Office concluded that while a school board member may prepare and circulate an informational memorandum or position paper to other board members, the use of a memorandum to solicit comments from other board members or the circulation of responsive memoranda by other board members would violate the Sunshine Law. "Such action would be equivalent to private meetings discussing the public business through the use of memoranda without allowing an opportunity for public input." *Id.*



In addition, the Attorney General's Office stated that while it is not a "direct violation" of the Sunshine Law for members to circulate their own written position papers on the same subject as long as the board members avoid any discussion or debate among themselves except at an open public meeting, this practice is "strongly discourage[d]." AGO 07-35. See also AGO 01-21 (city council's discussions and deliberations on matters coming before the council must occur at a duly noticed city council meeting and the circulation of position statements must not be used to circumvent the requirements of the statute); AGO 08-07 (city commissioner may post comment regarding city business on blog or message board; however, any subsequent postings by other commissioners on the subject of the initial posting could be construed as a response subject to the Sunshine Law); and Inf. Op. to Jove, January 22, 2009 (posting of anticipated vote on blog).

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1-C-6 | 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." See *Finch v. Seminole County School Board*, 995 So. 2d 1068 (Fla. 5th DCA 2008), holding 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. See also *Citizens for Sunshine, Inc. v. School Board of Martin County*, 125 So. 3d 184 (Fla. 4th DCA 2013) (three school board members violated the Sunshine Law when they visited an adult education school and talked with a school administrator, teachers, and students, because the "undisputed evidence showed that the defendant board members, without providing notice, conducted a meeting at the adult education school relating to matters on which foreseeable action would have been taken."). Cf. *Citizens for Sunshine v. City of Sarasota*, No. 2013 CA 007532 (Fla. 12th Cir. Ct. July 8, 2016), *aff'd sub nom. Citizens for Sunshine, Inc. v. Chapman*, 225 So. 3d 810 (Fla. 2d DCA 2017), available online in the Cases database at the open government site at myfloridalegal.com, in which the trial judge held that a city commissioner did not violate the Sunshine Law when she spoke about city commission issues at a private event organized by local merchants even though another commissioner was in the audience.

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1-C-7 | INFORMAL DISCUSSIONS, WORKSHOPS, ORGANIZATIONAL SESSIONS, ELECTION OF OFFICERS

The Sunshine Law extends to the discussions and deliberations as well as the formal action taken by a public board or commission. There is no requirement that a quorum be present or that an item be listed on a board agenda in order for a meeting of members of a public board or commission to be subject to s. 286.011, F.S. As the Florida Supreme Court said, "collective inquiry and discussion stages" are embraced within the terms of the statute. *Town of Palm Beach v. Gradison*, 296 So. 2d 474, 477 (Fla. 1974).

Accordingly, the law is applicable to 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. *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 764 (Fla. 2010). And see *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971); and *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969).

It is the how and the why officials decided to so act which interests the public, not merely the final decision. As the court recognized in *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969), disapproved in part on other grounds, *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985):

Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties, is a matter of public concern; and it is the entire decision-making process that the legislature intended to affect by the enactment of the statute before us.

Thus, two members of a civil service board violated the Sunshine Law when they held a private discussion about a pending employment appeal during a recess of a board meeting. *Citizens for Sunshine, Inc. v. City of Sarasota*, No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012), available online in the Cases database at the open government site at myfloridalegal.com. Similarly, the Attorney General's Office advised that the following gatherings are subject to the Sunshine Law: a public forum hosted by a city council member with city council members invited to attend and participate in the discussion, Inf. to Jove, January 12, 2009; "executive work sessions" held by a board of commissioners of a housing authority to discuss policy matters, AGO 76-102; "workshop



meetings" of a planning and zoning commission, AGO 74-94; and "conference sessions" held by a town council before its regular meetings, AGO 74-62. Cf. AGO 04-58 ("coincidental unscheduled meeting of two or more county commissioners to discuss emergency issues with staff" during a declared state of emergency is not subject to s. 286.011 if the issues do not require action by the county commission); and Inf. Op. to Spencer, April 23, 2003 (where city charter provides that special meeting of the council may be called by three members of the council, Sunshine Law is not violated if three members call a special meeting; "[t]he members must, however, be mindful not to discuss substantive issues which may come before the council in their consideration of whether a special meeting is necessary").

The Sunshine Law applies to an organizational session of a board. *Ruff v. School Board of Collier County*, 426 So. 2d 1015 (Fla. 2d DCA 1983). Discussions between two members of a three-member complaint review board regarding their selection of a third member are subject to s. 286.011, F.S. AGO 93-79. Additionally, the Sunshine Law is applicable to meetings held to elect officers of the board. AGOs 72-326 and 71-32 (boards may not use secret ballots to elect officers).

The Sunshine Law is, therefore, applicable to all functions of covered boards and commissions, whether formal or informal, which relate to the affairs and duties of the board or commission. "[T]he Sunshine Law does not provide that cases be treated differently based upon their level of public importance." *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 868 (Fla. 3d DCA 1994). See, e.g., Inf. Op. to Nelson, May 19, 1980 (meeting with congressman and city council members to discuss "federal budgetary matters which vitally concern their communities" should be held in the sunshine because "it appears extremely likely that discussion of public business by the council members [and perhaps decision making] will take place at the meeting").

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1-C-8 | INVESTIGATIVE MEETINGS

The Sunshine Law is applicable to investigative inquiries of public boards or commissions. The fact that a meeting concerns alleged violations of laws or regulations does not remove it from the scope of the law. AGO 74-84; and *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260 (Fla. 1973).

A number of statutory exemptions to the Sunshine Law have been enacted to close meetings of some agencies (usually state agencies) when those agencies are making investigatory determinations. For example, s. 112.324(2)(c)(d) and (e), F.S., provides that any proceeding related to a complaint, referral, or preliminary investigation conducted by the Commission on Ethics or other specified entities is exempt from open meetings requirements until the complaint is dismissed as legally insufficient, the alleged violator requests in writing that the proceedings be made public, the Commission on Ethics determines that it will not investigate a referral, or until the Commission or other specified entity determines whether probable cause exists to believe that a violation has occurred. Compare ss. 455.225(4) and 456.073(4), F.S. (meetings of probable cause panels of the Department of Business and Professional Regulation and Department of Health exempt from Sunshine Law until 10 days after probable cause is found to exist or until confidentiality is waived by subject of investigation).

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1-C-9 | LITIGATION MEETINGS

In the absence of a legislative exemption, discussions between a public board and its attorney are subject to s. 286.011, F.S. *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985) (s. 90.502, F.S., providing for the confidentiality of attorney-client communications under the Florida Evidence Code, does not create an exemption for attorney-client communications at public meetings; application of the Sunshine Law to such discussions does not usurp Supreme Court's constitutional authority to regulate the practice of law, nor is it at odds with Florida Bar rules providing for attorney-client confidentiality).

However, a discussion or activity that is not a meeting for purposes of the Sunshine Law shall not be construed to waive the attorney-client privilege established in s. 90.502, F.S. Section 90.502(6), F.S. See *Collier County Public Schools v. Mason Classical Academy, Inc.*, 342 So. 3d 753 (Fla. 2d DCA 2022), in which the court observed that s. 90.502(6), F.S., permits school district employees to claim the attorney-client privilege if they can establish that their conversations with counsel were protected by the privilege.

There are statutory exemptions, however, which apply to some discussions of pending litigation between a public board and its attorney.

a. Settlement Negotiations or Strategy Sessions Related to Litigation Expenditures

Section 286.011(8), F.S., provides:

Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened, and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation. (e.s.)

(1) Strict Compliance with Statutory Conditions

It has been held that the Legislature intended a strict construction of s. 286.011(8), F.S. *City of Dunnellon v. Aran*, 662 So. 2d 1026 (Fla. 5th DCA 1995). "The clear requirements of the statute are neither onerous nor difficult to satisfy." *Id.* at 1027. *Accord School Board of Duval County v. Florida Publishing Company*, 670 So. 2d 99 (Fla. 1st DCA 1996).

While section 286.011(8), F.S., does not specify who calls the closed attorney-client meeting, it requires

that the governmental entity's attorney "shall advise the entity at a public meeting that he or she desires advice concerning the litigation." Thus, the exemption merely provides a governmental entity's attorney an opportunity to receive necessary direction and information from the governmental entity regarding pending litigation. AGO 04-35. Accordingly, one of the conditions that must be met prior to holding a closed attorney-client meeting is that the city attorney must indicate to the city council at a public meeting that he or she wishes the advice of the city council regarding the pending litigation to which the city is presently a party before a court or administrative agency. Inf. Op. to Vock, July 11, 2001. "If the city attorney does not advise the city council at a public meeting that he or she desires the council's advice regarding the litigation, the city council is not precluded from providing such advice to the city attorney but it must do so at a public meeting." Id.

The requirement that the board's attorney advise the board at a public meeting that he or she desires advice concerning litigation is not satisfied by a previously published notice of the closed session; such an announcement must be made at a public meeting of the board. AGO 04-35. The request may be made during a special meeting provided that the special meeting at which the request is made is open to the public, reasonable notice has been given, and minutes are taken. AGO 07-31.

In *City of Dunnellon v. Aran*, supra, the court said that a city council's failure to announce the names of the lawyers participating in a closed attorney-client session violated the Sunshine Law. The court rejected the city's claim that when the mayor announced that attorneys hired by the city would attend the session (but did not give the names of the individuals), his "substantial compliance" was sufficient to satisfy the statute. Cf. *Zorc v. City of Vero Beach*, 722 So. 2d at 901, noting that deviation from the agenda at an attorney-client session is not authorized; while such deviation is permissible if a public meeting has been properly noticed, "there is no case law affording the same latitude to deviations in closed door meetings."



(2) Permitted Discussions During Closed Session

Section 286.011(8)(b), F.S., states that the subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures. If a board goes beyond the "strict parameters of settlement negotiations and strategy sessions related to litigation expenditures" and takes "decisive action," a violation of the Sunshine Law results. *Zorc v. City of Vero Beach*, 722 So. 2d at 900. And see AGO 99-37 (closed-meeting exemption may be used only when the attorney for a governmental entity seeks advice on settlement negotiations or strategy relating to litigation expenditures; such meetings should not be used to finalize action or discuss matters outside these two narrowly prescribed areas). Accord AGO 04-35.

Section 286.011(8), F.S., "simply provides a governmental entity's attorney an opportunity to receive necessary direction and information from the government entity. No final decisions on litigation matters can be voted on during these private, attorney-client strategy meetings. The decision to settle a case, for a certain amount of money, under certain conditions is a decision which must be voted upon in a public meeting." *School Board of Duval County v. Florida Publishing Company*, 670 So. 2d 99, 100 (Fla. 1st DCA 1996), quoting Staff of Fla. H.R. Comm. on Gov't Operations, CS/HB 491 (1993) Final Bill Analysis & Economic Impact Statement 2 (Fla. State Archives), at 3.

Thus, "[t]he settlement of a case is exactly that type of final decision contemplated by the drafters of section 286.011(8) which must be voted upon in the sunshine." *Zorc v. City of Vero Beach*, 722 So. 2d at 901. Accord AGO 08-17 (any action to approve a settlement or litigation expenditures must be voted on in a public meeting).

Accordingly, a court found that a city did not comply with s. 286.011(8), F.S., when it held closed meetings that "covered a wide range of political and policy issues not connected to" settlement of pending litigation regarding a comprehensive plan amendment or litigation expenses relating to the pending cases which at that point were on appeal. "While some of the discussion at

these meetings did in fact involve the costs associated with the pending litigation, by and large the meetings pertained to finding a way to readopt the comprehensive plan amendment that had been invalidated by the court and to avoid future litigation regarding the readopted amendment." *Anderson v. City of St. Pete Beach*, 161 So. 3d 548, 553 (Fla. 2d DCA 2014).

Similarly, a city council violated the Sunshine Law where the "great majority" of the discussion at an attorney-client session concerned the specifics of a proposed amendment to the city's trespass ordinance which was designed to address concerns expressed in a federal court decision finding the ordinance to be unconstitutional. *City of St. Petersburg v. Wright*, 241 So. 3d 903 (Fla. 2d DCA 2018). The participants at the closed meeting "did not limit themselves to discussing settlement or litigation expenditures" in the federal litigation. *Id.* See also *Freeman v. Times Publishing Company*, 696 So. 2d 427 (Fla. 2d DCA 1997) (discussion of methods or options to achieve continuing compliance with a long-standing federal desegregation mandate [such as whether to modify the boundaries of a school zone to achieve racial balance] must be held in the sunshine). Compare *Bruckner v. City of Dania Beach*, 823 So. 2d 167, 172 (Fla. 4th DCA 2002) (closed city commission meeting to discuss various options to settle a lawsuit involving a challenge to a city resolution, including modification of the resolution, authorized because the commission "neither voted, took official action to amend the resolution, nor did it formally decide to settle the litigation").

(3) Entity Involved in Pending Litigation

Section 286.011(8) permits an entity to use the exemption if the entity "is presently a party before a court or administrative agency...." For example, a city council and its attorney may hold a closed-door meeting pursuant to this statute to discuss settlement negotiations or strategy related to litigation expenditures for pending litigation involving a workers' compensation suit against the city because the system prescribed in ch. 440, F.S., "operates as a means of adjudicating workers' compensation claims and would be



considered litigation before an administrative agency." AGO 96-75.

In *Brown v. City of Lauderdale*, 654 So. 2d 302 (Fla. 4th DCA 1995), the court said it could "discern no rational basis for concluding that a city is not a 'party' to pending litigation in which it is the real party in interest." And see *Zorc v. City of Vero Beach*, 722 So. 2d at 900 (city was presently a party to ongoing litigation by virtue of its already pending claims in bankruptcy proceedings); and AGOs 09-15 (exemption applicable when city is real party in interest of a pending lawsuit despite not being a named party at the time of the meeting), and 08-17 (health care district may hold a closed attorney-client meeting to discuss settlement negotiations and strategies related to litigation expenditures for pending litigation in which its wholly-owned subsidiary holding company is the named party).

Although the *Brown* decision established that the exemption could be used by a city that was a real party in interest on a claim involved in pending litigation, that decision does not mean that an agency may meet in executive session with its attorney where there is only the threat of litigation. See AGOs 04-35 and 98-21 (s. 286.011[8] exemption "does not apply when no lawsuit has been filed even though the parties involved believe litigation is inevitable").

Similarly, s. 286.011(8), F.S. "may not be used to conduct a closed meeting during a mandatory arbitration proceeding, when there is no pending legal proceeding in a court or before an administrative agency." AGO 13-17. And see AGOs 06-03 (exemption not applicable to pre-litigation mediation proceedings), 09-14 (exemption not applicable to discussion of terms of mediation in conflict resolution proceedings under the "Florida Governmental Conflict Resolution Act," ss. 164.101-164.1061, F.S.), and 09-25 (town council which received pre-suit notice letter under the Bert J. Harris Act, s. 70.001, F.S., is not a party to pending litigation for purposes of s. 286.011[8], F.S.); and Inf. Op. to Barrett, February 17, 2016 (board not authorized to use exemption to discuss pending investigation and subpoena

where there is no ongoing judicial or administrative proceeding).

(4) Persons Authorized to Attend Closed Session

Only those persons listed in the statutory exemption, i.e., the entity, the entity's attorney, the chief administrative officer of the entity, and the court reporter are authorized to attend a closed attorney-client session. Thus, other staff members, consultants, or officials are not allowed to be present. *School Board of Duval County v. Florida Publishing Company*, 670 So. 2d at 101. See *Zorc v. City of Vero Beach*, 722 So. 2d 891, 898 (Fla. 4th DCA 1998), review denied, 735 So. 2d 1284 (Fla. 1999) (city charter provision requiring that city clerk attend all council meetings does not authorize clerk to attend closed attorney-client session; municipality may not authorize what the Legislature has expressly forbidden); AGO 01-10 (clerk of court not authorized to attend); and AGO 09-52 (attorneys representing superintendent not authorized to attend closed session to discuss settlement of administrative action in which school board is the named party). Cf. AGO 95-06 (s. 286.011(8), F.S., does not authorize the temporary adjournment and reconvening of meetings in order for members who are attending such a session to leave the room and consult with others outside the meeting).

Since the entity's attorney is permitted to attend the closed session, if the school board hires outside counsel to represent it in pending litigation, both the school board attorney and the litigation attorney may attend a closed session. AGO 98-06. See *Zorc v. City of Vero Beach*, 722 So. 2d at 898 (attendance of special counsel authorized). And see AGO 08-42 (qualified interpreters for the deaf are treated by the Americans with Disabilities Act as auxiliary aids in the nature of hearing aids and other assistive devices and may attend litigation strategy meetings of a board or commission to interpret for a deaf board member without violating section 286.011(8), F.S.). Cf. AGO 15-13 (mayor who is a voting member of the city council is not precluded from attending closed session relating to pending litigation

in which city council is a party, even though plaintiffs have also sued the mayor in his individual capacity).

(5) Determination of "conclusion" of the litigation

Section 286.011(8)(e), F.S., provides that transcripts of closed meetings "shall be made part of the public record upon conclusion of the litigation." See AGO 15-03 (transcript of a litigation strategy session which was closed to the public while the litigation was ongoing became a public record once the litigation was concluded). Cf. *Everglades Law Center, Inc. v. South Florida Water Management District*, 290 So. 3d 123 (Fla. 4th DCA 2019), noting that the mediation communications disclosed by a governmental agency during a closed session must be redacted from the transcript of the meeting when it becomes public record; the exemptions from disclosure for mediation communications in ss. 44.102(1) and 44.405(1), F.S., are not inconsistent with the requirements of s. 286.011(8)(e), F.S.

The statute does not recognize a continuation of the exemption for "derivative claims" made in separate, subsequent litigation. AGO 13-13. For example, a transcript of a closed meeting to discuss settlement of a quiet title lawsuit became a public record upon the entry of a final judgment in that case, even though the same parties were now embroiled in an inverse condemnation lawsuit. *Chmielewski v. City of St. Pete Beach*, 161 So. 3d 521 (Fla. 2d DCA 2014). Similarly, a claim for payment of attorney's fees does not extend the application of the exemption after a final judgment has been entered and a mandate issued. Inf. Op. to Boutsis, December 13, 2012.

Accordingly, a dismissal with prejudice pursuant to a settlement agreement that confers continuing jurisdiction on the court to enforce the terms of the settlement agreement operates as a conclusion of the litigation. AGO 15-03. By contrast, litigation that is ongoing but temporarily suspended pursuant to a stipulation for settlement has not been concluded for purposes of s. 286.011(8), F.S., and a transcript of meetings held between the city and its attorney to discuss such litigation may be kept confidential until conclusion of the litigation. AGO 94-64. And see AGO 94-

33 (public agency may maintain the confidentiality of a record of a strategy or settlement meeting between a public agency and its attorney until the suit is dismissed with prejudice or the applicable statute of limitations has run); and Inf. Op. to Boutsis, supra (legislative history of s. 286.011[8], F.S., indicates "that the Legislature intended the exemption to continue through the appeals segment of the litigation"). Cf. Wagner v. Orange County, 960 So. 2d 785 (Fla. 5th DCA 2007), concluding that the phrase "conclusion of the litigation or adversarial administrative proceedings" for purposes of the attorney work product exemption from the public records law found in s. 119.071(1)(d), F.S., encompasses postjudgment collection efforts such as a legislative claims bill.

In AGO 13-21, the Attorney General's Office observed that s. 286.011(8)(e), F.S., "should be seen as a tool which governmental boards or commissions may employ in their discretion but the statute should not be read as a prohibition against the release of such records prior to the conclusion of... litigation." Therefore, a city council, as the collegial body to which the exemption applies, may waive the exemption and release transcripts of meetings held pursuant to s. 286.011(8), F.S., prior to the conclusion of litigation. Id.

b. Risk Management Exemption

Section 768.28(16)(c), F.S., states that portions of meetings and proceedings relating solely to the evaluation of claims or to offers of compromise of claims filed with a risk management program of the state, its agencies and subdivisions, are exempt from s. 286.011, F.S. The minutes of such meetings and proceedings are also exempt from public disclosure until the termination of the litigation and settlement of all claims arising out of the same incident. Section 768.28(16)(d), F.S.

This exemption is limited and applies only to tort claims for which the agency may be liable under s. 768.28, F.S. AGO 04-35. The exemption is not applicable to meetings held prior to the filing of a tort claim with the risk management program. AGO 92-82. Moreover, a meeting of a city's risk management committee is exempt from the Sunshine Law only when the meeting relates solely to the evaluation of a tort claim filed



with the risk management program or relates solely to an offer of compromise of a tort claim filed with the risk management program. AGO 04-35.

Unlike s. 286.011(8), F.S., s. 768.28(16), F.S., does not specify the personnel who are authorized to attend the meeting. See AGO 00-20, advising that personnel of the school district who are involved in the risk management aspect of the tort claim being litigated or settled may attend such meetings without jeopardizing the confidentiality provisions of the statute.

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1-C-10 | PERSONNEL MATTERS

In the absence of a specific statutory exemption, meetings of a public board or commission to discuss personnel matters are subject to the Sunshine Law. *Times Publishing Company v. Williams*, 222 So. 2d 470 (Fla. 2d DCA 1969), disapproved in part on other grounds, *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985).

a. Collective Bargaining Discussions**(1) Strategy Sessions**

A limited exemption from s. 286.011, F.S., exists for discussions between the chief executive officer of the public employer, or his or her representative, and the legislative body of the public employer relative to collective bargaining. Section 447.605(1), F.S. A similar exemption is contained in s. 110.201(4), F.S., for discussions between the Department of Management Services and the Governor, between the department and the Administration Commission or agency heads, or between any of their respective representatives, relative to collective bargaining.

A duly-appointed labor negotiating committee of a city that does not have a city manager or city administrator qualifies as the "chief executive officer" for purposes of s. 447.605(1), F.S., and may use the exemption when meeting with the city council to discuss collective bargaining. AGO 85-99. And see AGO 99-27, concluding that a committee formed by the city manager to represent the city in labor negotiations may participate in closed executive sessions conducted pursuant to s. 447.605(1), F.S. The exemption also extends to meetings of the negotiating committee itself which are held to discuss labor negotiation strategies, including when the committee adjourns during negotiations to hold a caucus among its members to determine the strategy to be employed in ongoing negotiations. *Id.*

If a school superintendent's responsibility to conduct collective bargaining on behalf of the school board has been completely delegated to a separate labor negotiating committee and the superintendent does not participate in the collective bargaining negotiations, the exemption afforded by s. 447.605(1), F.S., applies

to discussions between the committee and the school board only and does not encompass discussions among the committee, school board and superintendent. AGO 98-06.

The exemption afforded by s. 447.605(1), F.S., applies only in the context of actual and impending collective bargaining negotiations. AGO 85-99. It does not allow private discussions of a proposed "mini-PERC ordinance" or the stance a public body intends to adopt in regard to unionization and/or collective bargaining. AGO 75-48. Moreover, a public body may not conduct an entire meeting outside the Sunshine Law merely by discussing one topic during the course of that meeting which may be statutorily exempt from s. 286.011, F.S. AGO 85-99.

Section 447.605(1), F.S., does not directly address the dissemination of information that may be obtained at the closed meeting, but there is clear legislative intent that matters discussed during such meetings are not to be open to public disclosure. AGO 03-09.

(2) Negotiations

The collective bargaining negotiations between the chief executive officer and a bargaining agent are not exempt and pursuant to s. 447.605(2), F.S., must be conducted in the sunshine. Once the collective bargaining process begins, when one side or its representative, whether before or after the declaration of an impasse, meets with the other side or its representative to discuss anything relevant to the terms and conditions of the employer-employee relationship, the meeting is subject to the Sunshine Law. *City of Fort Myers v. News-Press Publishing Company, Inc.*, 514 So. 2d 408, 412 (Fla. 2d DCA 1987). *Accord Brown v. Denton*, 152 So. 3d 8 (Fla. 1st DCA 2014), review denied, No. SC 16-2490 (Fla. February 24, 2016). See also AGO 99-27. As with other meetings subject to s. 286.011, F.S., minutes of the negotiation meeting must be kept. Inf. Op. to Fulwider, June 14, 1993.

The Legislature has, therefore, divided Sunshine Law policy on collective bargaining for public employees into two parts: when the public employer is meeting with its own side, it is exempt from the Sunshine Law; when the public employer is meeting with the other side, it

is required to comply with the Sunshine Law. *City of Fort Myers v. News-Press Publishing Company, Inc.*, 514 So. 2d at 412. And see *Brown v. Denton*, 152 So. 3d at 12 (By holding closed-door negotiations that resulted in changes to public employee pension benefits, "the [city and pension board] ignored an important party who also had the right to be in the room -- the public."). Cf. *Palm Beach County Classroom Teachers' Association v. School Board of Palm Beach County*, 411 So. 2d 1375, 1376 (Fla. 4th DCA 1982) (collective bargaining agreement cannot be used "to circumvent the requirements of public meetings" in s. 286.011, F.S.).

b. Disciplinary, Grievance, and Complaint Review Proceedings

Meetings of a board or commission to conduct disciplinary proceedings are subject to the Sunshine Law. See, e.g., AGO 92-65 (employee termination hearing conducted by housing authority commission). And see *News-Press Publishing Company v. Wisher*, 345 So. 2d 646, 647-648 (Fla. 1977), in which the Court disapproved of a county's use of "pseudonyms or cloaked references" during a county commission meeting held to reprimand an unnamed department head.

Thus, two members of a civil service board violated the Sunshine Law when they held a private discussion about a pending employment appeal during a recess of a board meeting. *Citizens for Sunshine, Inc. v. City of Sarasota*, No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012), available online in the Cases database at the open government site at myfloridalegal.com. And see *Barfield v. City of West Palm Beach*, No. CL94-2141-AC (Fla. 15th Cir. Ct. May 6, 1994), available online in the Cases database at the open government site at myfloridalegal.com. (complaint review board of a city police department is subject to the Sunshine Law); AGO 80-27 (sheriff civil service board created by special act is subject to the Sunshine Law). Cf. AGO 93-79 (discussions between two members of a three-member complaint review board regarding their selection of the third member of the board must be conducted in accordance with s. 286.011, F.S.).

Similarly, in *Dascott v. Palm Beach County*, 877 So. 2d 8 (Fla. 4th DCA 2004), the court held that a meeting of



a pre-termination conference panel established pursuant to county ordinance and composed of a department head, personnel director, and equal opportunity director should have been held in the Sunshine. Even though the county administrator had the sole authority to discipline employees, that authority had been delegated to the department head who in turn chose to share that authority with the other members of the panel. See also AGO 10-14 (team created by charter school board of directors to review employment decisions is subject to the Sunshine Law). Cf. AGO 77-132 (personnel council composed of citizens appointed by members of county commission to hear appeals from county employees who have been disciplined not authorized to deliberate in secret).

A grievance committee established as "the final hearing body for all matters determined to be grievances and [authorized] to uphold, modify, or deny any grievance" is subject to the Sunshine Law "because the [committee] clearly exercises decision-making authority." *Dascott v. Palm Beach County*, supra at 13. And see AGO 84-70 (Sunshine Law applies to staff grievance committee created to make a determination of "all facts and circumstances" and nonbinding recommendations to a county administrator regarding disposition of employee grievances). Cf. *Palm Beach County Classroom Teacher's Association v. School Board of Palm Beach County*, 411 So. 2d 1375 (Fla. 4th DCA 1982), in which the court affirmed the lower tribunal's refusal to issue a temporary injunction to exclude a newspaper reporter from a grievance arbitration hearing. A collective bargaining agreement cannot be used "to circumvent the requirements of public meetings" in s. 286.011, F.S. Id. at 1376.

By contrast, in *Jordan v. Jenne*, 938 So. 2d 526, 530 (Fla. 4th DCA 2006), the court determined that the Sunshine Law did not apply to a professional standards committee responsible for reviewing charges against a sheriff's deputy and making recommendations to the inspector general, because the inspector general made the "ultimate decision" on discipline and did not deliberate with the committee. See also *McDougall v. Culver*, 3 So. 3d 391 (Fla. 2d DCA 2009) (Internal Affairs



memorandum containing findings and recommendations circulated to senior officials for review and comment before submission to the sheriff for a decision on disciplinary action did not constitute a meeting under the Sunshine Law since officials only provided a recommendation but did not deliberate with the sheriff or have decision-making authority).

Similarly, if the mayor as chief executive officer, rather than the city council, is responsible under the city charter for disciplining city employees, meetings between the mayor and a city employee concerning discipline of the employee are not subject to the Sunshine Law. *City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989). And see AGO 07-54 (while post-termination hearings before city manager are not subject to the Sunshine Law, hearings before a three-member panel appointed by the city manager should be open).

c. Evaluations

The Sunshine Law applies to meetings of a board of county commissioners when interviewing applicants for county positions appointed by the board, when conducting job evaluations of county employees answering to and serving at the pleasure of the board, and when conducting employment termination interviews of county employees who serve at the pleasure of the board. AGO 89-37.

A board that is responsible for assessing the performance of its chief executive officer (CEO) should conduct the review and appraisal process in a proceeding open to the public as prescribed by s. 286.011, F.S., instead of using a review procedure in which individual board members evaluate the CEO's performance and send their individual written comments to the board chair for compilation and subsequent discussion with the CEO. AGO 93-90. However, meetings of individual school board members with the superintendent to discuss the individual board members' evaluations do not violate the Sunshine Law when such evaluations do not become the board's evaluation until they are compiled and discussed at a public meeting by the school board for adoption by the board. AGO 97-23.

d. 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 s. 286.011, F.S. 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. See also *Krause v. Reno*, 366 So. 2d 1244 (Fla. 3d DCA 1979) (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), and AGO 77-43 (Sunshine Law applies to committee selected by a county bar association on behalf of the school board to screen applicants and make recommendations for the position of school board attorney). Cf. *Dore v. Sliger*, No. 90-1850 (Fla. 2d Cir. Ct. July 11, 1990), available online in the Cases database at the open government site at myfloridalegal.com. (faculty of university law school prohibited from conducting secret ballots on personnel hiring matters).

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. See *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985), holding 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. And see *Knox v. District School Board of Brevard*, 821 So. 2d 311, 314 (Fla. 5th DCA 2002), holding that an interview team composed of staff was not subject to s. 286.011, F.S., even though the team made recommendations since "all the applications went to the superintendent and he decided



which applicants to interview and nominate to the school board.”

Moreover, s. 1004.098(2)(a), F.S., provides that any portion of a meeting held for the purpose of identifying or vetting applicants for president of a state university or a Florida College System institution, including any portion of a meeting which would disclose personal identifying information of applicants which is otherwise confidential under s. 1004.098(1), F.S., is exempt from disclosure requirements. Section 1004.28(1), F.S., establishes confidentiality for personal identifying information of these applicants. The age, race, and gender of applicants who met the minimum qualifications for the position who were considered and the personal identifying information of applicants included in the final group of applicants are no longer confidential beginning at the earlier of the date the final group of applicants is established or 21 days before the date of a meeting at which an interview of an applicant will be conducted or at which final action or a vote is to be taken on the offer of employment of an applicant. A complete recording is required of any portion of the closed meeting. The recording is exempt from disclosure requirements.

Section 1004.098(2)(a), F.S., does not apply to any portion of a meeting held to establish qualifications for the position or establishing a compensation framework to be offered to an applicant. The exemption also does not apply to meetings held after a final group of applicants for the position has been established. Section 1004.098(2)(c).

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1-C-11 | PURCHASING MEETINGS**a. Application of Sunshine Law**

A committee appointed by a public college's purchasing director to consider proposals submitted by contractors was held to be subject to the Sunshine Law because its function was to "weed through the various proposals, to determine which were acceptable and to rank them accordingly." *Silver Express Company v. District Board of Lower Tribunal Trustees*, 691 So. 2d 1099, 1100 (Fla. 3d DCA 1997). Accord *Inf. Op. to Lewis*, March 15, 1999 (panels established by state agency to create requests for proposals and evaluate vendor responses are subject to the Sunshine Law), and AGO 80-51 (Sunshine Law applicable to city selection committee screening proposals from consultants and audit firms). And see *Leach-Wells v. City of Bradenton*, 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999) (selection committee created by city council to evaluate proposals violated the Sunshine Law when the city clerk unilaterally ranked the proposals based on the committee members' individual written evaluations; the court held that "the short-listing was formal action that was required to be taken at a public meeting"); and *Schweickert v. Citrus County Port Authority*, No. 12-CA-1339 (Fla. 5th Cir. Ct. September 30, 2013), , available online in the Cases database at the open government site at myfloridalegal.com (ad hoc committee appointed by board violated the Sunshine Law when the members submitted individual written evaluations of the proposals to the staff, which then compiled the scores and ranked the proposals for submission to the board; the committee should have ranked the proposals at a public meeting). Compare *Carlson v. Florida Department of Revenue*, 227 So. 3d 1261 (Fla. 1st DCA 2017) (state agency "Evaluation Team" members who individually evaluated the competitors' proposals, individually assigned scores, and individually submitted their scores for consideration by the "Negotiation Team" were not required to conduct a public meeting to perform these functions because "the Evaluation Team [or more accurately, its individual members] neither ranked the competitors nor excluded any from consideration of the ultimate decider, the Negotiation Team").

In *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, 652 So. 2d 1169, 1170 (Fla. 4th DCA 1995), the court ruled that a board's selection and



negotiation committee violated the Sunshine Law when competing bidders were requested to excuse themselves from the public committee meeting during presentations by competitors. Cf. *Pinellas County School Board v. Suncam, Inc.*, 829 So. 2d 989 (Fla. 2d DCA 2002) (school board violated the Sunshine Law when it refused to permit videotaping of a public meeting held to evaluate general contractor construction proposals). See now s. 286.0113(2)(b), F.S., discussed below, providing an exemption from the Sunshine Law for portions of certain competitive solicitation meetings and requiring a complete recording of the exempt portions.

b. Recording Requirement for Exempt Meetings

Section 286.0113(2)(b)1. and 2., F.S., provide that any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation, is exempt from the Sunshine Law. In addition, any portion of a team meeting at which negotiation strategies are discussed is also exempt. See *Carlson v. Florida Department of Revenue*, 227 So. 3d 1261 (Fla. 1st DCA 2017), in which the court rejected the agency's argument that the exemption applies to the entirety of any meeting at which negotiation strategies are discussed, even those portions that have nothing to do with procurement. However, the court also said that "the exempted 'portion' includes not only the negotiation-strategies discussions themselves, but also meeting activities inextricably intertwined with those discussions." *Id.* at 1269. Cf. s. 255.0518, F.S. (sealed bids received pursuant to a competitive solicitation for construction or repairs of a public building or public work must be opened at a public meeting conducted in compliance with the Sunshine Law).

The term "[c]ompetitive solicitation" means "the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement." Section 286.0113(2)(a)1., F.S.

The term "team" means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation. Section 286.0113(2)(a)2., F.S.

A complete recording must be made of the exempt meeting; no portion of the exempt meeting may be held off the record. Section 286.0113(2)(c), F.S. Cf. AGO 10-42 (where statute required that closed proceedings of state committee be recorded and that no portion be off the record, audio recording of the proceedings "would appear to be the most expedient and cost-efficient manner to ensure that all discussion is recorded").

The recording and any records presented at the exempt meeting are exempt from public disclosure until the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier. Section 286.0113(2)(c)1. and 2., F.S. And see s. 286.0113(2)(c)3., F.S. (exempt status of recording if the agency rejects all bids, proposals, or replies, and concurrently provides notice of its intent to reissue a competitive solicitation).

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1-C-12 | 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). And see *Occidental Chemical Company v. Mayo*, 351 So. 2d 336, 340n.7 (Fla. 1977), disapproved in part on other grounds, *Citizens v. Beard*, 613 So. 2d 403 (Fla. 1992) (characterization of the Public Service Commission's decision-making process as "quasi-judicial" did not exempt it from s. 286.011, F.S.); and *Palm Beach County Classroom Teacher's Association v. School Board of Palm Beach County*, 411 So. 2d 1375 (Fla. 4th DCA 1982), affirming the lower court's refusal to issue a temporary injunction to exclude a newspaper reporter from a grievance hearing.

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. And see AGOs 92-65, 83-43 and 77-132. Cf. AGO 10-15 (special magistrate subject to the Sunshine Law when exercising the delegated decision-making authority of the value adjustment board).

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1-C-13 | REAL PROPERTY NEGOTIATIONS

In the absence of a statutory exemption, the negotiations by a public board or commission for the sale or purchase of property must be conducted in the sunshine. See *City of Miami Beach v. Berns*, 245 So. 2d 38, 40 (Fla. 1971) (city commission not authorized to hold closed sessions to discuss condemnation issues). In addition, if the authority of the public board or commission to acquire or lease property has been delegated to a single member, that member is subject to s. 286.011, F.S., and is prohibited from negotiating the acquisition or lease of the property in secret. AGO 74-294. Cf. AGO 95-06 (statutory exemption from Ch. 119, F.S., for certain records relating to the proposed purchase of real property does not authorize a city or its designee to conduct negotiations for purchase of property outside the Sunshine Law).

Advisory committees charged with land acquisition responsibilities are also subject to the Sunshine Law. See AGOs 87-42 (ad hoc committee appointed by mayor to meet with the Chamber of Commerce to discuss a proposed transfer of city property), and 86-51 (land selection committee appointed by water management district to evaluate and recommend projects for acquisition). Cf. *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857 (Fla. 3d DCA 1994) (committee established by county commission to negotiate lease agreement subject to s. 286.011).

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1-C-14 | SECURITY MEETINGS

While there is no general exemption from open meetings requirements that applies to all discussions relating to "security," s. 281.301(1), F.S., provides an exemption for portions of meetings relating directly to or that would reveal the security or fire-safety systems for any property owned by or leased to the state or any of its political subdivisions or for any privately owned or leased property which is in the possession of an agency.

Similarly, s. 286.0113(1), F.S., states that the portion of a meeting that would reveal a security or fire-safety system plan or portion thereof made confidential and exempt by s. 119.071(3)(a), F.S. (providing an exemption from the Public Records Act for a "security or fire-safety system plan") is exempt from open meetings requirements. See Inf. Op. to Sherman, July 2, 2018, noting that the phrasing of s. 286.0113(1), F.S., and the statement of legislative intent included in the session law show that the exemption applies to any portion of a meeting in which a record as defined in s. 119.071(3)(a) would be revealed.

Section 119.0725(2), F.S., discussed more fully on page 157 provides confidentiality for specified cybersecurity information held by an agency. Any portion of a meeting that would reveal cybersecurity information made confidential in s. 119.0725(2), F.S., is exempt from open meetings requirements. Section 119.0725(3), F.S. An exempt portion may not be off the record and must be recorded and transcribed; the recording and transcript are confidential. Id. See also s. 282.318(6) (portions of meetings held to discuss specified cybersecurity records held by state agencies are exempt); s. 286.0113(3)(a), F.S. (exemption for portions of meetings held by local government owned utilities that would reveal information technology security records made exempt under s. 119.0713(5), F.S.); s. 1004.0962(5), F.S. (exemption for portions of meetings held to discuss a postsecondary educational institution's "campus emergency response"); and s. 1004.055(2), F.S. (exemption for portions of meetings held to discuss specified information technology security records maintained by postsecondary educational institutions). Cf. s. 286.0113(4)(b), F.S. (exemption for portions of meetings that would reveal building plans or geographical maps indicating the actual or proposed location of 911, E911, or public safety radio communication system infrastructure).

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1-C-15 | SOCIAL EVENTS

Members of a public board or commission are not prohibited under the Sunshine Law from meeting together socially, provided that matters which may come before the board or commission are not discussed at such gatherings. AGO 92-79. Accord Inf. Op. to Batchelor, May 27, 1982.

Therefore, a luncheon meeting held by a private organization for members of a public board or commission at which there is no discussion among such officials on matters relating to public business would not be subject to the Sunshine Law merely because of the presence of two or more members of a covered board or commission. AGO 72-158. Cf. AGO 71-295, cautioning that "[p]ublic bodies should avoid secret meetings, from which the public and the press are effectively excluded, preceding official meetings, even though such secret meetings are held ostensibly for purely social purposes only and with the understanding that the members of the public body will, in good faith, attempt to avoid any discussion of official business."

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1-C-16 | TELEPHONE CONVERSATIONS AND VIRTUAL MEETINGS**a. Private Telephone Conversations**

Private telephone conversations between board members to discuss matters which foreseeably will come before that board for action violate the Sunshine Law. See *State v. Childers*, No. 02-21939-MMC; 02-21940-MMB (Escambia Co. Ct. June 5, 2003), per curiam affirmed, 886 So. 2d 229 (Fla. 1st DCA 2004), available online in the Cases database at the open government site at myfloridalegal.com (private telephone conversation during which two county commissioners and the supervisor of elections discussed redistricting violated the Sunshine Law). See also the discussion on pages 23-24 regarding the application of the Sunshine Law to emails, text messages, and other written communications between board members.

b. Authorization to Conduct and Participate in Public Meetings via Telephone, Video Conferencing, or Other Electronic Media**(1) Sunshine Law**

Although both the Florida Constitution and the Sunshine Law require that, unless exempt by law, meetings of a government board must be "public meetings" that are "open to the public," neither provision requires that members of the public board be physically present during the meeting. AGO 20-03. Instead, the Attorney General's Office has observed that a board's use of electronic media technology to increase public participation in meetings and the use of such media to allow members of a board or commission to participate in a duly noticed public meeting does not necessarily raise Sunshine Law issues, "but rather implicates the ability of a board or commission to conduct public business with a quorum." See Inf. Op. to Stebbins, December 1, 2015.

(2) In-Person Quorum Requirements

The Attorney General's Office has advised that if a quorum is required to conduct official business, boards may only conduct meetings by teleconferencing or other technological means if they are authorized to do so by law or the in person requirement for constituting a quorum is lawfully suspended during a state of

emergency. AGO 20-03. And see Executive Order 20-69, issued by Governor DeSantis on March 20, 2020 (recognizing that public boards should be able to use technology to conduct meetings in light of the declared public health emergency resulting from the COVID-19 pandemic, and suspending Florida Statutes requiring that a quorum be physically present during the state of emergency). Executive Order 20-69 (which expired on November 1, 2020), stipulated that boards holding virtual meetings must still comply with the Sunshine Law. See also AGO 20-03, noting that if "meetings are conducted by teleconferencing or other technological means, public access must still be afforded which permits the public to attend the meeting. That public access may be provided by teleconferencing or technological means."

Similarly, "[a]s an administrative arm of the city's governing body... it would appear that the same legislative requirement for the physical presence of a quorum in order to conduct municipal business would apply when the retirement board is carrying out its delegated duties." AGO 10-34. Thus, in January 2021, the Attorney General's Office concluded that in the absence of legislation providing otherwise, the same physical presence quorum requirement that governs school board meetings would apply to meetings of school board advisory committees. Inf. Op. to Myrick, January 28, 2021. See now s. 1001.43(10), F.S., effective July 1, 2021, providing that members of school district "special committees and advisory committees may attend meetings in person or through the use of telecommunications networks such as telephonic and video conferencing."

(a) State Boards

In AGO 98-28, the Attorney General's Office concluded that s. 120.54(5)(b)2., F.S., authorizes state boards to conduct public meetings via entirely electronic means provided that the board complies with uniform rules of procedure adopted by the state Administration Commission. These rules contain notice requirements and procedures for providing points of access for the public. See Rule 28-109, F.A.C. And see AGO 20-03, noting that state

boards have been conducting meetings using "communications media technology" since 1997.

(b) Local Boards

(1) Meetings

As to local boards, the Attorney General's Office has noted that the authorization in s. 120.54(5)(b)2., to conduct meetings entirely through the use of electronic media technology applies only to state agencies. AGOs 20-03 and 98-28. Thus, unless the in-person requirement to constitute a quorum has been waived by law or lawfully suspended during a state of emergency, a quorum of the board must be physically present. AGO 20-03.

For example, since s. 1001.372(2)(b), F.S., requires a district school board to hold its meetings at a "public place in the county," a quorum of the board must be physically present at the meeting of the school board. *Id.* And see AGOs 09-56 (where a quorum is required and absent a statute to the contrary, the requisite number of members must be physically present at a meeting in order to constitute a quorum). and 10-34 (city may not adopt an ordinance allowing members of a city board to appear by electronic means to constitute a quorum). Cf. s. 120.525(4), F.S., allowing a voting member of a regional planning council that covers three or more counties who participates via telephone or videoconferencing to be counted towards a quorum, provided that at least one third of the voting members are present at the meeting location and that notice of intent to participate remotely is given at least 24 hours prior to the meeting; s. 163.01(18), F.S., authorizing certain entities created by interlocal agreement to conduct public meetings and workshops by means of communications media technology; and Ch. 17-214, Laws of Florida, authorizing the Monroe County School Board, Monroe County Commission,



or any political subdivision thereof, to adopt rules and procedures for using communications media technology for meetings at which no final action is taken.

However, if a quorum of a local board is physically present, "the participation of an absent member by telephone conference or other interactive electronic technology is permissible when such absence is due to extraordinary circumstances such as illness[;]... [w]hether the absence of a member due to a scheduling conflict constitutes such a circumstance is a determination that must be made in the good judgment of the board." AGO 03-41.

For example, if a quorum of a local board is physically present at the public meeting site, a board may allow a member with health problems to participate and vote in board meetings through the use of such devices as a speaker telephone that allow the absent member to participate in discussions, to be heard by other board members and the public and to hear discussions taking place during the meeting. AGO 94-55. And see AGOs 92-44 (participation and voting by ill county commissioner), and 02-82 (physically-disabled city advisory committee members participating and voting by electronic means).

(2) Workshops

The physical presence of a quorum has not been required where electronic media technology (such as video conferencing and digital audio) is used to allow public access and participation at workshop meetings where no formal action will be taken. The use of electronic media technology, however, does not satisfy quorum requirements necessary for official action to be taken. See Inf. Op. to Stebbins, December 1, 2015 (approval of board meeting minutes constitutes official action; vote to approve minutes not exempted from

quorum requirements). Moreover, as discussed above, boards conducting workshop meetings electronically must still comply with the Sunshine Law.

For example, the Attorney General's Office advised that airport authority members may conduct informal discussions and workshops over the Internet, provided proper notice is given, and interactive access by members of the public is provided. AGO 01-66. Such interactive access must include not only public access via the Internet but also at designated places within the authority boundaries where the airport authority makes computers with Internet access available to members of the public who may not otherwise have Internet access. *Id.* For meetings, however, where a quorum is necessary for action to be taken, the physical presence of the members making up the quorum would be required in the absence of a statute providing otherwise. *Id.* Internet access to such meetings, however may still be offered to provide greater public access. *Id.* Cf. AGO 08-65, noting that a city's plan to provide additional public access to on-line workshop meetings by making computers available at a public library "should ensure that operating-type assistance is available at the library where the computers are located."

However, the use of an electronic bulletin board to discuss matters over an extended period of days or weeks, which does not permit the public to participate online, violates the Sunshine Law by circumventing the notice and access provisions of that law. AGO 02-32. And see Inf. Op. to Ciocchetti, March 23, 2006 (even though the public would be able to participate online, a town commission's proposed use of an electronic bulletin board to discuss matters that foreseeably may come before the commission over an extended period of time would not comply with the spirit or



letter of the Sunshine Law because the burden would be on the public to constantly monitor the site in order to participate meaningfully in the discussion). Compare AGO 08-65 (city advisory boards may conduct workshops lasting no more than two hours using an on-line bulletin board if proper notice is given and interactive access to members of the public is provided).

Moreover, there is no apparent authority for the use of electronic media technology to allow board members to remove a workshop or meeting from within the jurisdiction in which the board is empowered to carry out its functions and claim compliance with the Sunshine Law by providing the public electronic access to the remote meeting. Inf. Op. to Sugarman, August 5, 2015.

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FLORIDA'S SUNSHINE MANUAL

AUTHOR: Florida's Office of the Attorney General

DATE: March 9, 2023

PART: 1 GOVERNMENT IN THE SUNSHINE LAW

SUBPART: D NOTICE AND PROCEDURES

SECTIONS: 1-D-1 through 1-D-9

LINK: [TextBookDiscrimination.com/Handbooks/PublicRecords/FL/S1D](https://www.TextBookDiscrimination.com/Handbooks/PublicRecords/FL/S1D)



1-D-1 | AGENDA

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. See *Hough v. Stenbridge*, 278 So. 2d 288 (Fla. 3d DCA 1973); and *Yarbrough v. Young*, 462 So. 2d 515 (Fla. 1st DCA 1985) (posted agenda unnecessary and public body not required to postpone meeting due to inaccurate press report which was not part of the public body's official notice efforts).

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). And see *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1288 (Fla. 2010) (Sunshine Law does not prohibit use of consent agenda procedure).

Even though the Sunshine Law does not prohibit a board from adding topics to the agenda of a regularly noticed meeting, the Attorney General's Office has advised boards to postpone formal action on any added items that are controversial. See AGO 03-53, stating that "[i]n the spirit of the Sunshine Law, the city commission should be sensitive to the community's concerns that it be allowed advance notice and, therefore, meaningful participation on controversial issues coming before the commission."

While the Sunshine Law requires notice of meetings, not of the individual items which may be considered at that meeting, other statutes, codes, or ordinances may impose such a requirement and agencies subject to those provisions must follow them. See Inf. Op. to Mattimore, February 6, 1996.

For example, s. 120.525(2), F.S., requires that agencies subject to the Administrative Procedure Act must prepare an agenda in time to ensure that a copy may be received at least 7 days before the event by any person in the state who requests a copy and who pays the reasonable cost of the copy. The agenda, along with any meeting materials available in electronic form excluding confidential and exempt information, shall be published on the agency's website.

Id. After the agenda has been made available, changes may be made only for good cause. Id.

Similarly, special districts are required to post certain information on the district's official website, including: "[a]t least 7 days before each meeting or workshop, the agenda of the event." Section 189.069(2)(a)15., F.S. The information must remain on the website for at least 1 year after the event. Id.

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1-D-2 | LOCATION OF MEETINGS**a. Facilities that Discriminate or Unreasonably Restrict Access to the Facility**

Section 286.011(6), F.S., prohibits boards or commissions subject to the Sunshine Law from holding their meetings at any facility which discriminates on the basis of sex, age, race, creed, color, origin, or economic status, or which operates in such a manner as to unreasonably restrict public access to such a facility. And see s. 286.26, F.S., relating to accessibility of public meetings to the physically handicapped.

Public boards or commissions, therefore, are advised to avoid holding meetings at places where the public and the press are effectively excluded. AGO 71-295. Thus, a police pension board should not hold its meetings in a facility where the public has limited access and where there may be a "chilling" effect on the public's willingness to attend by requiring the public to provide identification, to leave such identification while attending the meeting, and to request permission before entering the room where the meeting is held. AGO 96-55. And see Inf. Op. to Galloway, August 21, 2008, in which the Attorney General's Office expressed concerns about holding a public meeting in a private home in light of the possible "chilling effect" on the public's willingness to attend.

While a city may not require persons wishing to attend public meetings to provide identification as a condition of attendance, it may impose certain security measures on members of the public entering a public building, such as requiring the public to go through metal detectors. AGO 05-13.

b. 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. Cf. *City of Miami Beach v. Berns*, 245 So. 2d 38, 41 (Fla. 1971), in which the Florida Supreme Court observed: "A secret meeting occurs when public officials meet at a time and place to avoid being seen or heard by the public." See also the discussion on page 48 relating to inaudible discussions.

c. Out-of-Town Meetings

The fact that a meeting is held in a public room does not make it public within the meaning of the Sunshine Law; for a meeting to be "public," the public must be given advance notice and provided with a reasonable opportunity to attend. *Bigelow v. Howze*, 291 So. 2d 645, 647-648 (Fla. 2d DCA 1974). See also the discussion on pages 24-25 relating to inspection and fact-finding trips.

Accordingly, a school board workshop held outside county limits over 100 miles away from the board's headquarters violated the Sunshine Law where the only advantage to the board resulting from the out-of-town gathering (elimination of travel time and expense due to the fact that the board members were attending a conference at the site) did not outweigh the interests of the public in having a reasonable opportunity to attend. *Rhea v. School Board of Alachua County*, 636 So. 2d 1383 (Fla. 1st DCA 1994). The court refused to adopt a rule prohibiting any board workshops from being held at a site more than 100 miles from its headquarters, instead applying a balancing of interests test to determine which interest predominates in a given case. As stated by the court, "[t]he interests of the public in having a reasonable opportunity to attend a Board workshop must be balanced against the Board's need to conduct a workshop at a site beyond the county boundaries." *Id.* at 1385. And see Inf. Op. to Sugarman, August 5, 2015 (no apparent authority for use of electronic media technology to allow city pension board members to remove a workshop or meeting from within the jurisdiction in which the board is empowered to carry out its functions and claim compliance with the Sunshine Law by providing the public with electronic access to the remote meeting).

In addition, there may be other statutes which limit where board meetings may be held. See, e.g., s. 125.001, F.S. (meetings of the board of county commissioners may be held at any appropriate public place in the county); s. 1001.372, F.S. (school board meetings may be held at any appropriate public place in the county). And see AGOs 08-01 and 03-03 (municipality may not hold commission meetings at facilities outside its boundaries). See now ss. 166.0213(1), F.S. (governing body of municipality with 500 or fewer residents may hold meetings within 5 miles of the exterior jurisdictional boundary of the municipality at such time and place as may be prescribed by ordinance or resolution); 166.0213(2), F.S. (governing body of a municipality may hold joint meetings to receive, discuss, and act upon matters of mutual interest with the governing body of the county within which the municipality is located or the governing body of another municipality at such time and place as shall be prescribed by ordinance or resolution); and 125.001(2), F.S. (authorizing boards of county commissioners to hold joint public meetings with governing boards of adjacent counties or municipalities upon due public notice within the jurisdiction of all participating counties and municipalities; provided that an authorizing resolution is adopted, no official vote is taken at the joint meeting, and the joint meeting may not take the place of a public hearing required by law). Cf. AGO 20-03, noting that a quorum of the board must be physically present at the meeting of a board which is required to be held at a place within the body's jurisdiction. For more information on this issue, please see the discussion on pages 38-40.

Conduct which occurs outside the state which would constitute a knowing violation of the Sunshine Law is a second degree misdemeanor. Section 286.011(3), F.S. Such violations are prosecuted in the county in which the board or commission normally conducts its official business. Section 910.16, F.S.

d. Size of Meeting Facilities

The Sunshine Law requires that meetings of a public board or commission be "open to the public." If a large turnout is expected for a particular meeting, the Attorney General's Office has recommended that public boards and commissions take reasonable steps (such as moving the meeting to a larger room) to accommodate those who wish to attend. Inf. Op. to

Galloway, August 21, 2008. If the largest available public meeting room cannot accommodate all of those who are expected to attend, the use of video technology (e.g., a television screen outside the meeting room) may be appropriate. See *Kennedy v. St. Johns River Water Management District*, No. 2009-0441-CA (Fla. 7th Cir. Ct. September 27, 2010), per curiam affirmed, 84 So. 3d 331 (Fla. 5th DCA 2011), available online in the Cases database at the open government site at myfloridalegal.com (even though not all members of the public were able to enter the meeting room, board did not violate the Sunshine Law when it held a meeting at the board's usual meeting place and in the largest available room; the court noted, however, that the board set up a computer with external speakers so that those who were not able to enter the meeting room could view and hear the proceedings).

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1-D-3 | MINUTES**a. Scope of Minutes Requirement**

Section 286.011(2), F.S., requires that minutes of a meeting of a public board or commission be promptly recorded and open to public inspection. Workshop meetings are not exempted from this requirement. AGOs 08-65 and 74-62. And see *Lozman v. City of Riviera Beach*, No. 502007CA007552XXXXMBAN (Fla. 15th Cir. Ct. June 9, 2009), per curiam affirmed, 46 So. 3d 573 (Fla. 4th DCA 2010), available online in the Cases database at the open government site at myfloridalegal.com (minutes required for city council's agenda review meetings).

Because the term "promptly" is not defined in the statute, it "should be construed in its plain and ordinary sense." Inf. Op. to Board of Trustees, January 27, 2009. The informal advisory opinion notes that Webster's New Universal Unabridged Dictionary (2003) defines "prompt" as done, performed, delivered, etc., at once or without delay.

Draft minutes of a board meeting may be circulated to individual board members for corrections and studying prior to approval by the board, so long as any changes, corrections, or deletions are discussed and adopted during the public meeting when the board adopts the minutes. AGOs 02-51 and 74-294. Cf. Inf. Op. to Stebbins, December 1, 2015 (vote to approve minutes constitutes official action of a board; no authority to exempt a vote to approve minutes from quorum requirements).

The minutes are public records when the person responsible for preparing the minutes has performed his or her duty even though they have not yet been sent to the board members or officially approved by the board. AGO 91-26. And see *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1288 (Fla. 2010) (city violated both the language and the purpose of s. 286.011[2] by denying public access to its minutes until after approval).

Section 286.011, F.S., does not specify who is responsible for taking the minutes of public meetings. This appears to be a procedural matter which the individual boards or commissions must resolve. Inf. Op. to Baldwin, December 5, 1990.



b. Content of Minutes

The term "minutes" as used in s. 286.011, F.S., contemplates a brief summary or series of brief notes or memoranda reflecting the events of the meeting; accordingly a verbatim transcript is not required. AGO 82-47. And see *State v. Adams*, No. 91-175-CC (Fla. Sumter Co. Ct. July 15, 1992), available online in the Cases database at the open government site at myfloridalegal.com (no violation of Sunshine Law where minutes failed to reflect brief discussion concerning a proposed inspection trip). Cf. s. 20.052(5)(c), F.S., requiring that minutes, including a record of all votes cast, be maintained for all meetings of an advisory body, commission, board of trustees, or other collegial body adjunct to an executive agency.

c. 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). Cf. AGO 10-42 (where statute requires that all closed proceedings of child abuse death review committee be recorded and that no portion be off the record, audio recording of the proceedings "would appear to be the most expedient and cost-efficient manner to ensure that all discussion is recorded").

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 and their retention is governed by schedules established by the Division of Library and Information Services of the Department of State in accordance with s. 257.36(6), F.S. AGO 86-21. Accord AGO 86-93 (tape recordings of school board meetings are subject to Public Records Act even though written minutes are required to be prepared and made available to the public).



d. Use of Transcript as Minutes

Although a written transcript is not required, a board may use a written transcript of the meeting as the minutes, if it chooses to do so. Inf. Op. to Fulwider, June 14, 1993.

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1-D-4 | NOTICE REQUIREMENTS**a. Reasonable Notice Required**

A vital element of the Sunshine Law is the requirement that boards subject to the law provide "reasonable notice" of all meetings. See s. 286.011(1), F.S. Even before the statutory amendment in 1995 expressly requiring notice, the courts had stated that in order for a public meeting to be in essence "public," reasonable notice of the meeting must be given. See *Hough v. Stembbridge*, 278 So. 2d 288, 291 (Fla. 3d DCA 1973); *Yarbrough v. Young*, 462 So. 2d 515, 517 (Fla. 1st DCA 1985).

Reasonable public notice is required for all meetings subject to the Sunshine Law and is required even though a quorum is not present. AGO 90-56. And see *Baynard v. City of Chiefland, Florida*, No. 38-2002-CA-000789 (Fla. 8th Cir. Ct. July 8, 2003) available online in the Cases database at the open government site at myfloridalegal.com (reasonable notice required even if subject of meeting is "relatively unimportant"). Notice is required even though meetings of the board are "of general knowledge" and are not conducted in a closed door manner. *TSI Southeast, Inc. v. Royals*, 588 So. 2d 309, 310 (Fla. 1st DCA 1991). "Governmental bodies who hold unnoticed meetings do so at their peril." *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 869 (Fla. 3d DCA 1994).

The Sunshine Law does not define the term "reasonable notice," and "[f]ew cases address the question of what is reasonable notice." See *Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780 (Fla. 4th DCA 2018). In *Transparency*, the court referenced AGO 73-170, which concluded that the type of notice given depends on the purpose for the notice, the character of the event about which the notice is given, and the nature of the rights to be affected. "Where there is no specific legislative directive as to what constitutes reasonable notice as a matter of law, we agree with the Attorney General that it is a fact specific inquiry." *Transparency*, at 787.

Therefore, the type of notice is variable and depends upon the facts of the situation and the board involved. In each case, an agency must give notice at such time and in such a manner as to enable the media and the general public to attend the meeting. AGOs 00-08, 04-44, 80-78 and 73-170. And see



Rhea v. City of Gainesville, 574 So. 2d 221, 222 (Fla. 1st DCA 1991) (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). Cf. Lyon v. Lake County, 765 So. 2d 785, 790 (Fla. 5th DCA 2000) (where county attorney provided citizen with "personal due notice" of a committee meeting and its function, it would be "unjust to reward" the citizen by concluding that a meeting lacked adequate notice because the newspaper advertisement failed to correctly name the committee). See also Suncam, Inc. v. Worrall, No. CI97-3385 (Fla. 9th Cir. Ct. May 9, 1997), available online in the Cases database at the open government site at myfloridalegal.com (Sunshine Law requires notice to the general public; agency not required to provide "individual notice" to company that wished to be informed when certain meetings were going to occur).

For example, "burying a notice inside a committee application and calendar on the instructional materials page of the [school district's] website is an unreasonable way to give public notice of a meeting" of a school board textbook committee that is subject to the Sunshine Law. Florida Citizens Alliance, Inc. v. School Board of Collier County, 328 So. 3d 22 (Fla. 2d DCA 2021). Additionally, the notices did not mention that the meetings were open to the public. By contrast, the school board posted notices of regular school board meetings on the public notice page of the district website and in an electronic newsletter.

While the Attorney General's Office cannot 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, if there is one.

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 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 highly effective in providing notice of upcoming meetings.

The notice procedures set forth above should be considered as suggestions which will vary depending upon the circumstances of each particular situation. See AGO 73-170 ("If the purpose for notice is kept in mind, together with the character of the event about which notice is to be given and the nature of the rights to be affected, the essential requirements for notice in that situation will suggest themselves"). See also AGOs 00-08, 94-62 and 90-56. An individual challenging the adequacy of a meeting notice is not required "to allege and prove that some member of the public was not afforded an opportunity to attend the meeting because notice was not adequate," because this "is not an element of a cause of action for a Sunshine Law violation." *Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780, 787 (Fla. 4th DCA 2018).

Thus, in *Rhea v. City of Gainesville*, 574 So. 2d 221 (Fla. 1st DCA 1991), the court held that a complaint alleging that members of the local news media were contacted about a special meeting of the city commission one and one-half hours before the meeting stated a sufficient cause of action that the Sunshine Law had been violated. Compare *News and Sun-Sentinel Company v. Cox*, 702 F. Supp. 891 (S.D. Fla. 1988) (no Sunshine Law violation occurred when on March 31, a "general notice" of a city commission meeting scheduled for April 5 was posted on the bulletin board outside city hall); and *Lozman v. City of Riviera Beach*, No. 502008CA027882 (Fla. 15th Cir. Ct. December 8, 2010), per curiam affirmed, 79 So. 3d 36 (Fla. 4th DCA 2012), available online in the Cases database at the open government site at myfloridalegal.com (no violation of



Sunshine Law where notice of special meeting held on Monday, September 15 was posted at city hall and faxed to the media on Friday, September 12 and members of the public [including the media] attended the meeting).

The determination as to who will actually prepare the notice or agenda is essentially "an integral part of the actual mechanics and procedures for conducting that meeting and, therefore, aptly relegated to local practice and procedure as prescribed by... charters and ordinances." Hough, 278 So. 2d at 291.

b. Notice Requirements when Meeting Adjourned to a Later Date

If a meeting is to be adjourned and reconvened later to complete the business from the agenda of the adjourned meeting, the second meeting should also be noticed. AGO 90-56.

c. Notice Relating to Record Needed for Appellate Review

Section 286.0105, F.S., requires:

Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

This statute applies to every "board, commission, or agency of this state." See AGO 19-14 (Education Practices Commission, established in s. 1012.79, F.S., is a "commission" for purposes of s. 286.0105, F.S.)

The notice requirement in s. 286.0105, F.S., "is imposed at each occasion where notice of a meeting or hearing is required and is to be included in the notice to be given to the public of such meeting." Linares v. District School Board of Pasco

County, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available online in the Cases database at the open government site at myfloridalegal.com, quoting from AGO 89-82. See also *Everglades Law Center, Inc. v. South Florida Water Management District*, 290 So. 3d 123 (Fla. 4th DCA 2019), noting that with the adoption of s. 286.0105, F.S., "the legislature understood the importance of a verbatim record for appellate review of government board decisions."

d. Paid Advertising Requirements and Additional Notice Provisions Imposed by Other Statutes, Codes, or Ordinances

While the Sunshine Law requires only that reasonable public notice be given, a public agency may be subject to additional notice requirements imposed by other statutes, charters or codes. In such cases, the requirements of that statute, charter, or code must be strictly observed. Inf. Op. to Mattimore, February 6, 1996.

For example, while the Sunshine Law does not mandate that an agency use a paid advertisement to provide public notice of a meeting, other statutes may specify publication requirements for certain actions. See *Yarbrough v. Young*, 462 So. 2d 515, 517n.1 (Fla. 1st DCA 1985) (Sunshine Law does not require city council to give notice "by paid advertisements" of its intent to take action regarding utilities system improvements, although the Legislature "has required such notice for certain subjects," e.g., 166.041[3][c], F.S.). See also s. 189.015(1), F.S. (notice requirements for meetings of the governing bodies of special districts); and s. 1001.372(2)(c), F.S. (school board meetings). Cf. s. 50.0311, F.S. (Internet website publication of governmental agency notices).

Similarly, a board or commission subject to Ch. 120, F.S., the Administrative Procedure Act, must comply with the notice and publication requirements of that act. See, e.g., s. 120.525, F.S. Those requirements, however, are imposed by Ch. 120, F.S., not s. 286.011, F.S., although the notice of a board or commission meeting published pursuant to Ch. 120, F.S., also satisfies the notice requirements of s. 286.011, F.S. *Florida Parole and Probation Commission v. Baranko*, 407 So. 2d 1086 (Fla. 1st DCA 1982).

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1-D-5 | PUBLIC COMMENT

Prior to the adoption of s. 286.0114, F.S. (2013), Florida courts had determined that s. 286.011, F.S., provides a right to attend public meetings, but does not provide a right to be heard. See *Herrin v. City of Deltona*, 121 So. 3d 1094, 1097 (Fla. 5th DCA 2013) (phrase "open to the public" as used in s. 286.011, F.S., means that "meetings must be properly noticed and reasonably accessible to the public, not that the public has the right to be heard at such meetings"). See also *Keesler v. Community Maritime Park Associates, Inc.*, 32 So. 3d 659 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1289 (Fla. 2010); and *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1288 (Fla. 2010).

However, as the court observed in *Herrin*, s. 286.0114(2), F.S., now mandates that "[m]embers 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 does not have to occur at the same meeting at which the board or commission takes official action if the opportunity "occurs at a meeting that is during the decision-making process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action." Section 286.0114(2), F.S.

The terms "proposition" or "official action" are not defined in the statute, nor is there a distinction between official action taken at a formal meeting versus an informal setting, such as a workshop. Inf. Op. to Jacquot, April 25, 2014. "In light of the purpose of the statute to allow public participation during the decision-making process on a proposition, it should be liberally construed to facilitate that purpose." Id.

Section 286.0114(3), F.S., states that the public's "opportunity to be heard" does not apply to:

1. An official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act;
2. An official act involving no more than a ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations;
3. A meeting that is exempt from s. 286.011; or

4. A meeting during which the board or commission is acting in a quasi-judicial capacity. See AGO 17-01 (s. 286.0114, F.S., does not require that members of the public be given a reasonable opportunity to be heard at quasi-judicial code enforcement hearings held by a special magistrate pursuant to authority delegated from the county code enforcement board).

The statute does not prohibit a board or commission from "maintaining orderly conduct or proper decorum in a public meeting." Section 286.0114(2), F.S. In addition, the opportunity to be heard is "subject to rules or policies adopted by the board or commission" as provided in s. 286.0114(4), F.S. These rules or policies are limited to those that:

1. Provide guidelines regarding the amount of time an individual has to address the board or commission;
2. Prescribe procedures for allowing representatives of groups or factions on a proposition to address the board or commission, rather than all members of such groups or factions, at meetings in which a large number of individuals wish to be heard;
3. Prescribe procedures or forms for an individual to use in order to inform the board or commission of a desire to be heard; to indicate his or her support, opposition, or neutrality on a proposition; and to indicate his or her designation of a representative to speak for him or her or his or her group on a proposition if he or she so chooses; or
4. Designate a specified period of time for public comment.

If a board or commission adopts such rules or policies and complies with them, it is deemed to be acting in compliance with the statute. Section 286.0114(5), F.S. See *Larson v. Palm Beach County*, No. 502016CA001706 (Fla. 15th Cir. Ct. September 26, 2019), per curiam affirmed, 311 So. 3d 853 (Fla. 4th DCA 2021), available online in the Cases database at the open government site at myfloridalegal.com, upholding a board procedural rule giving members of the public three minutes to speak on all items on the consent agenda versus three minutes on each regular agenda item. And see *City of Miami v. Airbnb, Inc.*, 260 So. 3d 478, 483-484 (Fla. 3d DCA 2018) (temporary injunction prohibiting city from requiring speakers at public hearings to give their names and addresses was overbroad). Cf. *Jones v. Heyman*, 888 F.2d 1328, 1333 (11th Cir. 1989) (mayor's actions in attempting to confine the

speaker to the agenda item in the city commission meeting and having the speaker removed when the speaker appeared to become disruptive constituted a reasonable time, place and manner regulation and did not violate the speaker's First Amendment rights); and *Lozman v. City of Riviera Beach, Fla.*, 138 S.Ct. 1945 (2018), in which the U.S. Supreme Court held that the existence of probable cause for a speaker's arrest for failure to follow the city council's rules of procedure did not bar the speaker's First Amendment retaliation claim.

A circuit court is authorized to issue injunctions for the purpose of enforcing s. 286.0114, F.S. Section 286.0114(6), F.S. However, an action taken by a board or commission which is found to be in violation of that statute is not void as a result of the violation. Section 286.0114(8), F.S.

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1-D-6 | RESTRICTIONS ON PUBLIC ATTENDANCE**a. Cameras and Tape Recorders**

A board or commission may adopt reasonable rules and policies which ensure the orderly conduct of a public meeting and require orderly behavior on the part of those persons attending a public meeting. A board, however, may not ban the use of non-disruptive recording devices. *Pinellas County School Board v. Suncam, Inc.*, 829 So. 2d 989 (Fla. 2d DCA 2002) (school board's ban on unobtrusive videotaping invalid). Accord AGO 91-28. And see AGO 77-122 (silent non-disruptive tape recording of district meeting permissible).

The Legislature in Ch. 934, F.S., appears to implicitly recognize the public's right to silently record public meetings. AGO 91-28. Chapter 934, F.S., the Security of Communications Act, regulates the interception of oral communications. Section 934.02(2), F.S., however, defines "[o]ral communication" to specifically exclude "any public oral communication uttered at a public meeting...." See also *Inf. Op. to Gerstein*, July 16, 1976, stating that public officials may not complain that they are secretly being recorded during public meetings in violation of s. 934.03, F.S.

b. Exclusion of Certain Members of the Public

The term "open to the public" as used in the Sunshine Law means open to all persons who choose to attend. AGO 99-53. Cf. *Ribaya v. Board of Trustees of City Pension Fund for Firefighters and Police Officers in City of Tampa*, 162 So. 3d 348, 356 (Fla. 2d DCA 2015) (although there appears to be no case law "squarely resolving" whether a wrongful exclusion of one person would void all actions taken at the meeting, "there is legal support for that proposition").

Thus the court in *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, 652 So. 2d 1169, 1170 (Fla. 4th DCA 1995), ruled that a procurement committee violated the Sunshine Law by requesting that bidders voluntarily excuse themselves from each other's presentations. See now s. 286.0113(2), F.S., providing an exemption from the Sunshine Law for any portion of a meeting at which a vendor makes an oral presentation or answers questions as part of a competitive solicitation, and

requiring a complete recording of the exempt portion of the meeting.

Staff of a public agency clearly are members of the public as well as employees of the agency; they cannot, therefore, be excluded from public meetings. AGO 79-01. Section 286.011, F.S., however, does not preclude the reasonable application of ordinary personnel policies, for example, the requirement that annual leave be used to attend meetings, provided that such policies do not frustrate or subvert the purpose of the Sunshine Law. *Id.*

Although not directly addressing the open meetings laws, courts of other states have ruled that in the absence of a compelling governmental interest, agencies may not single out and exclude a particular news organization or reporter from press conferences. See, e.g., *Times-Picayune Publishing Corporation v. Lee*, 15 Media L. Rep. 1713 (E.D. La. 1988); *Borrecia v. Fasi*, 369 F. Supp. 906 (D. Hawaii 1974); *Quad-City Community News Service, Inc. v. Jebens*, 334 F. Supp. 8 (S.D. Iowa 1971); and *Southwestern Newspapers Corporation v. Curtis*, 584 S.W.2d 362 (Tex. Ct. App. 1979).

c. Inaudible Discussions

A school district advisory committee violated the Sunshine Law when it conducted "breakout sessions" where the members discussed committee business at two separate tables which meant that members at one table could not hear what was being discussed at the other table and members of the public could not hear what was being discussed at the sessions. *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available online in the Cases database at the open government site at myfloridalegal.com. And see AGO 71-159 (cautioning against discussions of public business which are audible only to "a select few" who are at the table with board members). Cf. *Citizens for Sunshine, Inc. v. City of Sarasota*, No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012), available online in the Cases database at the open government site at myfloridalegal.com (two members of a civil service board violated the Sunshine Law when they held a private discussion concerning a pending employment appeal during a recess of a board meeting).

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1-D-7 | TIME AND LENGTH OF MEETING

In *Greenbarg v. Metropolitan Dade County Board of County Commissioners*, 618 So. 2d 760 (Fla. 3d DCA 1993), the court held that there was "no impropriety" when a county commission continued to meet until the "early morning hours."

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1-D-8 | USE OF CODES OR PREASSIGNED NUMBERS IN ORDER TO AVOID IDENTIFYING INDIVIDUALS

Section 286.011, F.S., requires that meetings of public boards or commissions be "open to the public at all times...." See *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821, 823 (Fla. 1985), disapproving a procedure permitting representatives of the media to attend a city council meeting provided that they agreed to "respect the confidentiality" of certain matters:

"Under the Sunshine Law, a meeting is either fully open or fully closed; there are no intermediate categories."

The use of preassigned numbers or codes at public meetings to avoid identifying the names of applicants violates s. 286.011, F.S., because "to permit discussions of applicants for the position of a municipal department head by a preassigned number or other coded identification in order to keep the public from knowing the identities of such applicants and to exclude the public from the appointive or selection process would clearly frustrate or defeat the purpose of the Sunshine Law." AGO 77-48. Accord AGO 76-240 (Sunshine Law prohibits the use of coded symbols at a public meeting in order to avoid revealing the names of applicants for the position of city manager). And see *News-Press Publishing Company v. Wisher*, 345 So. 2d 646, 648 (Fla. 1977) ("public policy of this state as expressed in the public records law and the open meetings statute eliminate any notion that the commission was free to conduct the county's personnel business by pseudonyms or cloaked references").

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1-D-9 | VOTING**a. 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. (e.s.)

A member of a state, county, or municipal board who is present at a meeting is thus prohibited from abstaining from voting except as authorized in s. 286.012, F.S. See AGO 02-40 (s. 286.012, F.S., applies to advisory board appointed by a county commission). Cf. Inf. Op. to Dickens, August 10, 2006 (nothing in the language of s. 286.012 indicates that a member who temporarily absents himself or herself from the dais [but is still present in the meeting room] during a vote should be recorded as an affirmative vote).

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), cause dismissed sua sponte, 322 So. 2d 915 (Fla. 1975) (to rule otherwise would



permit any member to frustrate official action merely by refusing to participate). And see Inf. Op. to Dickens, *supra* (failure of a member to vote does not render a voted matter invalid if a quorum is present and the required number of affirmative votes have been cast by the voting members).

Section 286.012, F.S., applies only to state, county, and municipal boards. AGO 04-21. Special district boards are not subject to its provisions and may adopt their own rules regarding abstention, subject to s. 112.3143, F.S. AGOs 04-21, 85-78 and 78-11.

Questions as to what constitutes a conflict of interest and when board members are prohibited from voting under the above statutes should be referred to the Florida Commission on Ethics.

b. Proxy Votes

In the absence of statutory authority, proxy voting by board members is not allowed. AGO 78-117.

c. Roll Call Vote

While s. 286.012, F.S., requires that each member present cast a vote either for or against the proposal under consideration by the public board or commission, it is not necessary that a roll call vote of the members present and voting be taken so that each member's specific vote on each subject is recorded. The intent of the statute is that all members present cast a vote and that the minutes so reflect that by either recording a vote or counting a vote for each member. *Ruff v. School Board of Collier County*, 426 So. 2d 1015 (Fla. 2d DCA 1983) (roll call vote so as to record the individual vote of each such member is not necessary). Cf. s. 20.052(5)(c), F.S., requiring that minutes, including a record of all votes cast, be maintained for all meetings of an advisory body, commission, board of trustees, or other collegial body adjunct to an executive agency.

d. Written or Secret Ballot

A secret ballot violates the Sunshine Law. See AGO 73-264 (members of a personnel board may not vote by secret ballot during a hearing concerning a public employee). Accord AGOs 72-326 and 71-32 (board may not use secret ballots to elect the chair and other officers of the board).

However, 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. See AGO 73-344.

In addition, because the Sunshine Law expressly requires that public meetings be open to the public "at all times," after the ballots are marked, the person who tallies the votes should announce the names of the persons who voted and their votes. For example, a judge found that a board violated the Sunshine Law when the board members' individual votes for each applicant were not announced at the public meeting. According to the court, "[t]he fact that the ballots are preserved as public records available for public inspection does not satisfy the requirement of openness." *Schweickert v. Citrus County Port Authority*, No. 12-CA-1339 (Fla. 5th Cir. Ct. September 30, 2013), available online in the Cases database at the open government site at myfloridalegal.com. See also AGO 71-32 (if at any time during a public meeting, the proceedings become "covert, secret or not wholly exposed to the view and hearing of the public," that portion of the meeting is not "open to the public at all times").

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FLORIDA'S SUNSHINE MANUAL

AUTHOR: Florida's Office of the Attorney General

DATE: March 9, 2023

PART: 1 GOVERNMENT IN THE SUNSHINE LAW

SUBPART: E STATUTORY EXEMPTIONS

SECTIONS: 1-E-1 through 1-E-4

LINK: [TextBookDiscrimination.com/Handbooks/PublicRecords/FL/S1E](https://www.TextBookDiscrimination.com/Handbooks/PublicRecords/FL/S1E)



1-E-1 | CREATION AND REVIEW OF EXEMPTIONS

Article I, s. 24(b), Fla. Const., requires that all meetings of a collegial public body of the executive branch of state government or of local government, at which official acts are to be taken or at which the public business of such body is to be transacted or discussed, be open and noticed to the public. All laws in effect on July 1, 1993, that limit access to meetings remain in force until they are repealed. Article I, s. 24(d), Fla. Const.

The Legislature is authorized to provide by general law passed by two-thirds vote of each house for the exemption of meetings, provided such law states with specificity the public necessity justifying the exemption and is no broader than necessary to accomplish the stated purpose of the law. Article I, s. 24(c), Fla. Const. See s. 119.011(8), F.S., defining the term "exemption" to include a provision of general law which provides that a "specified... meeting, or portion thereof, is not subject to the access requirements" in s. 286.011, F.S., or Art. I, s. 24, Fla. Const. And see *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999) (open meetings exemption for certain hospital board meetings unconstitutional because it did not meet the constitutional standard of specificity as to stated public necessity and limited breadth to accomplish that purpose). Compare *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189, 195 (Fla. 1st DCA 2004), upholding a more recent public meetings exemption because "the constitutional concerns expressed by the Florida Supreme Court in *Halifax*" were met due to a more specific legislative justification accompanied by adequate findings to support the breadth of the exemption.

Section 119.15, F.S., the Open Government Sunset Review Act, provides for legislative review of exemptions from the open government laws. Pursuant to the Act, in the fifth year after enactment of a new exemption or expansion of an existing exemption, the exemption shall be repealed on October 2 of the fifth year, unless the Legislature acts to reenact the exemption. Section 119.15(3), F.S. The two-thirds vote requirement for enactment of exemptions set forth in Art. I, s. 24(c), Fla. Const., applies to re-adoption of exemptions as well as initial creation of exemptions. AGO 03-18.

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1-E-2 | EXEMPTIONS ARE NARROWLY CONSTRUED

As a statute enacted for the public benefit, the Sunshine Law should be liberally construed to give effect to its public purpose, while exemptions should be narrowly construed. See, e.g., *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969); *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983). And see *Turner v. Wainwright*, 379 So. 2d 148, 155 (Fla. 1st DCA 1980), affirmed and remanded, 389 So. 2d 1181 (Fla. 1980) (rejecting a board's argument that a legislative requirement that certain board meetings must be open to the public implies that the board could meet privately to discuss other matters); and *Carlson v. Florida Department of Revenue*, 227 So. 3d 1261 (Fla. 1st DCA 2017), rejecting an agency's argument that a statute providing an exemption for "[a]ny portion of team meeting at which negotiation strategies are discussed" covered the entirety of any meeting at which negotiation strategies were discussed.

The courts have recognized that the Sunshine Law should be construed so as to frustrate all evasive devices. *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971); *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979); *Wolfson v. State*, 344 So. 2d 611 (Fla. 2d DCA 1977). As the Florida Supreme Court stated in *Canney v. Board of Public Instruction of Alachua County*, 278 So. 2d 260, 264 (Fla. 1973):

Various boards and agencies have obviously attempted to read exceptions into the Government in the Sunshine Law which do not exist. Even though their intentions may be sincere, such boards and agencies should not be allowed to circumvent the plain provisions of the statute. The benefit to the public far outweighs the inconvenience of the board or agency. If the board or agency feels aggrieved, then the remedy lies in the halls of the Legislature and not in efforts to circumvent the plain provisions of the statute by devious ways in the hope that the judiciary will read some exception into the law.

If a board member is unable to determine whether a meeting is subject to the Sunshine Law, he or she should either leave the meeting or ensure that the meeting complies with the Sunshine Law. See *City of Miami Beach v. Berns*, *supra* at 41; *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974) ("The principle to be followed is very simple: When in doubt, the members of any board,

agency, authority or commission should follow the open-meeting policy of the State.").

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1-E-3 | EFFECT OF STATUTORY EXEMPTIONS**a. Notice Requirements**

If a statute exempts meetings from the requirements of s. 286.011, F.S., the meetings are also exempt from the notice provisions in that statute that would otherwise apply. AGO 93-86. Accord AGO 07-28.

b. Attendance at Closed Meetings

In some cases, a statutory exemption specifies the persons who are permitted to attend a closed session. For example, s. 286.011(8), F.S., establishing an open meetings exemption for certain discussions pertaining to pending litigation, provides that only the entity, the entity's attorney, the entity's chief administrative officer, and a court reporter may attend the closed meeting. See AGO 01-10 (clerk of court not authorized to attend).

However, where an exemption for certain public hospital board meetings relating to a "written strategic plan" did not specify who may attend (other than a court reporter), the Attorney General's Office recommended that the board "strictly limit attendance to only those individuals who are essential to the purpose of the meeting, i.e., to discuss, receive a report on, modify, or approve a strategic plan, in order to avoid what the courts might consider to be a disclosure to the public." AGO 07-28. And see AGO 06-34 (members of a local advocacy council, who are attending a closed session of the statewide advocacy council during the discussion of one of the local council's cases, may not remain in the closed session when the statewide advocacy council is considering cases from other advocacy councils which are unrelated to the local advocacy council's cases).

c. Disclosure of Matters Discussed at Closed Meeting

In a 2014 informal opinion, the Attorney General's Office considered whether the unauthorized disclosure by a council member of information discussed during a closed "shade meeting" held pursuant to s. 286.011(8), F.S., would violate the Sunshine Law or have other legal consequences. The opinion concluded that the prohibitions and penalties for violation of the Sunshine Law that are set forth in s. 286.011(3), F.S., appear to be directed only at persons who attend closed meetings that should have been open to the public. See Inf.



Op. to Pritt, November 26, 2014. Accordingly, the Attorney General's Office was unable to conclude that unauthorized disclosure of matters disclosed at a valid closed session would violate the Sunshine Law. Id. However, other statutory provisions, such as ss. 112.313(8), 112.51, or 839.26, F.S., relating to disclosure of privileged information could apply to this situation. Id. And see AGO 03-09 (exemption for collective bargaining strategy sessions in s. 447.605[1], F.S., does not directly address the dissemination of information that may be obtained at the closed meeting, but there is clear legislative intent that matters discussed during such meetings are not to be open to public disclosure).

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1-E-4 | SPECIAL ACT EXEMPTIONS

Prior to July 1, 1993, exemptions from the Sunshine Law could be created by special act. Article I, s. 24, Fla. Const., however, now limits the Legislature's ability to enact an exemption from the constitutional right of access to open meetings established thereunder. While exemptions in effect on July 1, 1993, remain in force until repealed, the Constitution requires that exemptions enacted after that date must be by general law. Such law must state with specificity the public necessity for the exemption and be no broader than necessary to accomplish that stated purpose.

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FLORIDA'S SUNSHINE MANUAL

AUTHOR: Florida's Office of the Attorney General

DATE: March 9, 2023

PART: 1 GOVERNMENT IN THE SUNSHINE LAW

SUBPART: F REMEDIES AND PENALTIES

SECTIONS: 1-F-1 through 1-F-7

LINK: TextBookDiscrimination.com/Handbooks/PublicRecords/FL/S1F



1-F-1 | CRIMINAL PENALTIES

A knowing violation of the Sunshine Law is a misdemeanor of the second degree. Section 286.011(3)(b), F.S. See *Carlson v. Florida Department of Revenue*, 227 So. 3d 1261, 1263 (Fla. 1st DCA 2017), declaring that the Sunshine Law is "serious business," because "there is criminal liability for officials who knowingly disregard it."

A person convicted of a second degree misdemeanor may be sentenced to a term of imprisonment not to exceed 60 days and/or fined up to \$500. Sections 775.082(4)(b) and 775.083(1)(e), F.S. The criminal penalties apply to members of advisory councils subject to the Sunshine Law as well as to members of elected or appointed boards. AGO 01-84 (school advisory council members).

Conduct which occurs outside the state which constitutes a knowing violation of the Sunshine Law is a second degree misdemeanor. Section 286.011(3)(c), F.S. Such violations are prosecuted in the county in which the board or commission normally conducts its official business while violations occurring within the state may be prosecuted in that county. Section 910.16, F.S.

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1-F-2 | REMOVAL FROM OFFICE

When a method for removal from office is not otherwise provided by the Florida Constitution or by law, the Governor may suspend an elected or appointed public officer who is indicted or informed against for any misdemeanor arising directly out of his or her official duties. Section 112.52(1), F.S. If convicted, the officer may be removed from office by executive order of the Governor. Section 112.52(3), F.S. A person who pleads guilty or nolo contendere or who is found guilty is, for purposes of s. 112.52, F.S., deemed to have been convicted, notwithstanding the suspension of sentence or the withholding of adjudication. Id. Cf. s. 112.51, F.S. (municipal officers) and Art. IV, s. 7, Fla. Const. (state and county officers).

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1-F-3 | NONCRIMINAL INFRACTIONS

Section 286.011(3)(a), F.S., imposes noncriminal penalties for violations of the Sunshine Law by providing that any public officer violating the provisions of the Sunshine Law is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500. It has been held that the state attorney may pursue such actions on behalf of the state. *State v. Foster*, 12 F.L.W. Supp. 1194a (Fla. Broward Co. Ct. September 26, 2005). Accord AGO 91-38. Cf. *State v. Foster*, 13 F.L.W. Supp. 385a (Fla. 17th Cir. Ct. January 25, 2006), in which the circuit court found that no right to a jury trial is triggered when an individual faces a noncriminal charge of violating the Sunshine Law.

If a nonprofit corporation is subject to the Sunshine Law, its board of directors constitute "public officers" for purposes of s. 286.011(3)(a), F.S. AGO 98-21. See *Goosby v. State*, No. GF05-(001122-001130,001135)-BA (Fla. 10th Cir. Ct. December 22, 2006), available online in the Cases database at the open government site at myfloridalegal.com (members of the Polk County Opportunity Council, which had assumed and exercised a delegated governmental function, were "public officers" for purposes of the Sunshine Law and subject to the imposition of the noncriminal infraction fine). Compare, *State v. Dorworth*, No. 14-MM-5841 (Fla. Orange Co. Ct. October 21, 2014), affirmed, No. 14-AP-48 (Fla. 9th Cir. Ct. August 19, 2015), available online in the Cases database at the open government site at myfloridalegal.com, dismissing a misdemeanor charge against a lobbyist who was accused of violating the Sunshine Law by relaying information between board members and thereby aiding the members to meet without complying with the Sunshine Law. The trial judge determined that by charging the lobbyist, the state attorney "expanded the reach of the Sunshine Law to private citizens; and, the Legislature did not intend for the statute to apply to private citizens."

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1-F-4 | ATTORNEY'S FEES

Reasonable attorney's fees will be assessed against a board or commission found to have violated the Sunshine Law. Section 286.011(4), F.S. See *Indian River County Hospital District v. Indian River Memorial Hospital, Inc.*, 766 So. 2d 233, 235 (Fla. 4th DCA 2000), concluding that the trial court erred by failing to assess attorney's fees against a nonprofit hospital corporation found to have violated the Sunshine Law. And see s. 286.011(5), F.S., authorizing the assessment of attorney fees if a board appeals an order finding the board in violation of the Sunshine Law and the order is affirmed.

While s. 286.011(4), F.S., authorizes an award of appellate fees if a person successfully appeals a trial court order denying access, the statute "does not supersede the appellate rules, nor does it authorize the trial court to make an initial award of appellate attorney's fees." *School Board of Alachua County v. Rhea*, 661 So. 2d 331 (Fla. 1st DCA 1995), review denied, 670 So. 2d 939, 332 (Fla. 1996). Thus, a person prevailing on appeal must file an appropriate motion in the appellate court in order to receive appellate attorney's fees. *Id.* If a board appeals an order finding the board in violation of the Sunshine Law, and the order is affirmed, "the court shall assess a reasonable attorney's fee for the appeal" against the board. Section 286.011(5), F.S.

Attorney's fees may be assessed against the individual members of the board except in those cases where the board sought, and took, the advice of its attorney. Section 286.011(4) and (5), F.S.

If a member of a board or commission charged with a violation of s. 286.011, F.S., is subsequently acquitted, the board or commission is authorized to reimburse that member for any portion of his or her reasonable attorney's fees. Section 286.011(7), F.S. Cf. AGO 86-35, stating that this subsection does not authorize the reimbursement of attorney's fees incurred during an investigation of alleged sunshine violations when no formal charges were filed, although common law principles may permit such reimbursement.

Reasonable attorney's fees may be assessed against the individual filing an action to enforce the provisions of s. 286.011, F.S., if the court finds that it was filed in bad faith or was frivolous. Section 286.011(4), F.S. The fact that a plaintiff may be unable to prove that a secret meeting took place, however, does not necessarily mean that attorney's fees will be assessed. See *Bland v. Jackson County*, 514 So. 2d 1115, 1116 (Fla. 1st DCA 1987),



concluding that although the plaintiff was unable to prove that a meeting in violation of the Sunshine Law took place, the evidence showed that the county commission unanimously voted on the issue in an open public meeting without identifying what they were voting on and without any discussion and under these circumstances an inference might reasonably be drawn that the commissioners had no need to discuss the action being taken because they had already discussed and decided the issue before the public meeting.

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1-F-5 | CIVIL ACTIONS FOR INJUNCTIVE OR DECLARATORY RELIEF

Section 286.011(2), F.S., states that the circuit courts have jurisdiction to issue injunctions upon application by any citizen of this state. See *Allen v. United Faculty of Miami-Dade College*, 197 So. 3d 604 (Fla. 3d DCA 2016) (Public Employees Relations Commission [PERC] properly dismissed unfair labor practice charge alleging a violation of the Sunshine Law, as s. 286.011, F.S., is enforceable only by the courts, not by PERC). Cf. *Godheim v. City of Tampa*, 426 So. 2d 1084, 1088 (Fla. 2d DCA 1983), rejecting an argument that Godheim lacked standing to raise a Sunshine Law violation, and finding that the Sunshine Law on its face gives him standing without regard to whether he suffered a special injury. Accord *Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So. 3d 22 (Fla. 2d DCA 2021) ('The School Board concedes on appeal that the trial court erred in ruling that the Plaintiffs lacked standing," citing *Godheim*).

While normally irreparable injury must be proved by the plaintiff before an injunction may be issued, in Sunshine Law cases the mere showing that the law has been violated constitutes "irreparable public injury." *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974); and *Times Publishing Company v. Williams*, 222 So. 2d 470 (Fla. 2d DCA 1969), disapproved in part on other grounds, *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985). The plaintiff's burden is to "establish by the greater weight of the evidence" that a meeting which should have been held in the sunshine took place on the date alleged. *Lyon v. Lake County*, 765 So. 2d 785, 789 (Fla. 5th DCA 2000).

A complaint for injunctive relief must allege by name or sufficient description the identity of the public official with whom the defendant public official has violated the Sunshine Law. *Deerfield Beach Publishing, Inc. v. Robb*, 530 So. 2d 510 (Fla. 4th DCA 1988). And see *Forehand v. School Board of Gulf County, Florida*, 600 So. 2d 1187 (Fla. 1st DCA 1992) (plaintiff was not denied a fair and impartial hearing because the board only briefly deliberated in public before a vote was taken as there was no evidence that the board had privately deliberated on this issue); and *Law and Information Services v. City of Riviera Beach*, 670 So. 2d 1014 (Fla. 4th DCA 1996) (patent speculation, absent any allegation that a nonpublic meeting in fact occurred, is insufficient to state a cause of action).

Although a court cannot issue a blanket order enjoining any violation of the Sunshine Law based upon a finding that the law

was violated in particular respects, a court may enjoin a future violation that bears some resemblance to the past violation. See *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 699-700 (Fla. 1969), *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, 652 So. 2d 1169, 1173 (Fla. 4th DCA 1995), and *Citizens for Sunshine, Inc. v. Martin County School Board*, 125 So. 3d 184 (Fla. 4th DCA 2013). See also *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983) (trial court's permanent injunction affirmed). Compare *Leach-Wells v. City of Bradenton*, 734 So. 2d 1168, 1170n. 1 (Fla. 2d DCA 1999), in which the court noted that had a citizen appealed the trial court's denial of her motion for temporary injunction based on a selection committee's alleged violation of the Sunshine Law, the appellate court "would have had the opportunity to review this matter before the project was completed and to direct that the City be enjoined from entering into a final contract with the developer until after such time as the ranking of the proposals could be accomplished in compliance with the Sunshine Law."

The future conduct must be "specified, with such reasonable definiteness and certainty that the defendant could readily know what it must refrain from doing without speculation and conjecture." *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, supra, quoting from *Board of Public Instruction v. Doran*, 224 So. 2d 693, 699 (Fla. 1969). And see *Lozman v. City of Riviera Beach*, No. 502007CA007552XXXXMB (Fla. 15th Cir. Ct. June 9, 2009), per curiam affirmed, 46 So. 3d 573 (Fla. 4th DCA 2010), available online in the Cases database at the open government site at myfloridalegal.com (injunctive relief against future violations of city to record minutes of certain meetings appropriate in light of city's past conduct and consistent refusal to record such minutes even after being advised to do so by the city attorney and because the city "has continuously taken the legal position that local governments are not required by the Sunshine Law to record minutes").

Declaratory relief is not appropriate where no present dispute exists but where governmental agencies merely seek judicial advice different from that advanced by the Attorney General and the state attorney or an injunctive restraint on the prosecutorial discretion of the state attorney. *Askew v. City of Ocala*, 348 So. 2d 308 (Fla. 1977).

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1-F-6 | VALIDITY OF ACTION TAKEN IN VIOLATION OF THE SUNSHINE LAW AND SUBSEQUENT CORRECTIVE ACTION

Section 286.011, F.S., 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 is void ab initio. *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). *Accord Sarasota Citizens For Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010), noting that "where officials have violated section 286.011, the official action is void ab initio." See *Silver Express Company v. District Board of Lower Tribunal Trustees*, 691 So. 2d 1099 (Fla. 3d DCA 1997) (selection committee rankings resulting from a meeting held in violation of the Sunshine Law are void ab initio and agency enjoined from entering into contract based on such rankings); *TSI Southeast, Inc. v. Royals*, 588 So. 2d 309 (Fla. 1st DCA 1991) (contract for sale and purchase of real property voided because board failed to properly notice the meeting under s. 286.011, F.S.); *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1288 (Fla. 2010) (by failing to open its minutes to public inspection and copying in a timely and reasonable manner, prejudice is presumed and therefore city's approval of minutes is null and void ab initio); and *Brown v. Denton*, 152 So. 3d 8 (Fla. 1st DCA 2014), (upholding trial court ruling that voided an agreement reached after closeddoor mediation sessions which resulted in changes to pension benefits of city employees in certain unions). Compare s. 286.0114(8), F.S. (an action taken by a board or commission which is found to be in violation of s. 286.0114, F.S. [providing a right to be heard on a proposition before a state or local board or commission] "is not void as a result of that violation").

Similarly, a circuit judge found that where two members of civil service board held a private discussion about a pending case during a recess, the board's subsequent findings in the case were "null and void" and the city must reconvene the board and hear the evidence de novo. *Citizens for Sunshine, Inc. v. City of Sarasota*, No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012), available online in the Cases database at the open government site at myfloridalegal.com. And see *Ribaya v. Board of Trustees of City Pension Fund for Firefighters and Police Officers in City of Tampa*, 162 So. 3d 348, 356 (Fla. 2d DCA 2015) (although there appears to

be no case law "squarely resolving" whether a wrongful exclusion of one person would void all actions taken at the meeting, "there is legal support for that proposition").

A violation need not be "clandestine" in order for a contract to be invalidated because "the principle that a Sunshine Law violation renders void a resulting official action does not depend upon a finding of intent to violate the law or resulting prejudice." *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, 652 So. 2d 1169, 1171 (Fla. 4th DCA 1995). But see *Killearn Properties, Inc. v. City of Tallahassee*, 366 So. 2d 172 (Fla. 1st DCA 1979), cert. denied, 378 So. 2d 343 (Fla. 1979) (city which had received benefits under contract was estopped from claiming contract invalid as having been entered into in violation of the Sunshine Law).

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 decision of the board or commission will not be disturbed. *Tolar v. School Board of Liberty County*, 398 So. 2d 427, 429 (Fla. 1981). *Accord Bruckner v. City of Dania Beach*, 823 So. 2d 167, 171 (Fla. 4th DCA 2002) (Sunshine violations "can be cured by independent, final action completely in the Sunshine"). And see *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 861 (Fla. 3d DCA 1994) (adoption of the open government constitutional amendment, Art. I, s. 24, Fla. Const., did not overrule the *Tolar* "standard of remediation"). Cf. *Board of County Commissioners of Sarasota County v. Webber*, 658 So. 2d 1069 (Fla. 2d DCA 1995) (no evidence suggesting that board members met in secret during a recess to reconsider and deny a variance and then perfunctorily ratified this decision at the public hearing held a few minutes later); *B.M.Z. Corporation v. City of Oakland Park*, 415 So. 2d 735 (Fla. 4th DCA 1982) (where no evidence that any decision was made in private, subsequent formal action in sunshine was not merely perfunctory ratification of secret decisions or ceremonial acceptance of secret actions).

Thus, in a case involving the validity of a lease approved by a board of county commissioners after an advisory committee held two unnoticed meetings regarding the lease, a court held that the Sunshine Law violations were cured when the board of county commissioners held open public hearings after the unnoticed meetings, an effort was made to make available to the public the

minutes of the unnoticed meetings, the board approved a lease that was markedly different from that recommended by the advisory committee, and most of the lease negotiations were conducted after the advisory committee had concluded its work. *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 860-861 (Fla. 3d DCA 1994).

Similarly, a school board remedied an inadvertent violation of the Sunshine Law when it subsequently held full, open and independent public hearings prior to adopting a redistricting plan. *Finch v. Seminole County School Board*, 995 So. 2d 1068, 1073 (Fla. 5th DCA 2008). And see *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010) (any possible violations that occurred when county commissioners circulated e-mails among each other were cured by four subsequent public meetings involving discussion of multiple proposals); *Jackson v. City of Tallahassee*, 265 So. 3d 736 (Fla. 1st DCA 2019) (public city commission meeting to fill a vacancy on the commission, which included a full discussion of the appointment, candidate presentations, more than an hour of public comment, and numerous speakers, cured any purported violation that may have occurred during the application process). Cf. *Anderson v. City of St. Pete Beach*, 161 So. 3d 548, 553-554 (Fla. 2d DCA 2014), noting that "even when an illicit action is 'cured' it does not absolve a public body of its responsibility for violating the Sunshine Law in the first instance; it simply provides a way to salvage a void act by reconsidering it in Sunshine."

It must be emphasized, however, that only a full open hearing will cure the defect; a violation of the Sunshine Law will not be cured by a perfunctory ratification of the action taken outside of the sunshine. *Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So. 2d 694 (Fla. 3d DCA 1988). See also *Anderson v. City of St. Pete Beach*, 161 So. 3d at 553 (city failed to cure Sunshine Law violation since it merely perfunctorily ratified in public session what had already been decided in closed meetings).

For example, in *Zorc v. City of Vero Beach*, 722 So. 2d 891, 903 (Fla. 4th DCA 1998), review denied, 735 So. 2d 1284 (Fla. 1999), the Fourth District explained why a subsequent city council meeting did not cure the council's prior violation of the Sunshine Law:

It is evident from the record that the meeting was not a full reexamination of the issues, but rather, was merely the perfunctory acceptance of the City's prior decision. This was not a full, open public hearing

convened for the purpose of enabling the public to express its views and participate in the decision-making process.

Instead, this was merely a Council meeting which was then opened to the public for comment at the City's request. There was no significant discussion of the issues or a discourse as to the language sought to be included. The City Councilmen were provided with transcripts of the hearings, but none reviewed the language previously approved, and the Council subsequently voted to deny reconsideration of the wording.

More recently, the Fourth District reversed an order granting summary judgment in favor of a city which claimed that a special meeting cured an alleged Sunshine Law violation arising from approval of a separation agreement for the departing city manager. The court observed that the entire proceeding lasted less than 15 minutes and "no one mentioned the terms of the agreement, nor did they discuss at length the reasons for the termination." *Transparency for Florida, Inc. v. City of Port St. Lucie*, 240 So. 3d 780, 786 (Fla. 4th DCA 2018). According to the court, "[t]he meeting may be more perfunctory... than the meeting in *Zorc*." *Id.* And see *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018), available online in the Cases database at the open government site at myfloridalegal.com (minutes of school board meeting did not go into enough depth to carry the school district's burden of proving a cure of an advisory committee's violation of the Sunshine Law; the violation can be remedied only when all matters previously considered by the advisory committee are brought by independent action into the sunshine). Cf. AGO 12-31 (audit committee's statutorily prescribed function to create a request for proposals may not be delegated to a subordinate entity; the committee may not, therefore, ratify a defective request for proposals which was created and issued by the county's financial officer contrary to the requirements of the law).

Similarly, a school board's argument that it had cured Sunshine violations committed by its textbook committees because it held two public board meetings on the textbook recommendations, and also posted all the materials online, was rejected based on a finding that the board had failed to hold "a full and open hearing" on the recommendations. *Florida Citizens Alliance, Inc. v. School*



Board of Collier County, 328 So. 3d 22 (Fla. 2d DCA 2021). The court found it significant that under a school board policy, the board could not choose a textbook on its own by considering other alternatives from the textbooks previously considered by the committee. Instead, if the board rejected a textbook, the matter would go back to the textbook committee for a new review and recommendation.

Moreover, an appellate court warned that while subsequent public board meetings may have "cured" a Sunshine Law violation, "if a pattern of Sunshine Law violations existed before this violation, then perhaps we may have found that any subsequent school board actions were merely 'perfunctory ratification[s] of secret actions and decisions.'" Citizens for Sunshine, Inc. v. Martin County School Board, 125 So. 3d 184, 189 (Fla. 4th DCA 2013). See Bert Fish Foundation v. Southeast Volusia Hospital District, No. 2010-20801-CINS (Fla. 7th Cir. Ct. February 24, 2011), available online in the Cases database at the open government site at myfloridalegal.com (series of public meetings did not "cure" Sunshine Law violations that resulted from 21 closed door meetings over 16 months; "[t]here was so much darkness for so long, that a giant infusion of sunshine might have been too little or too late").

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1-F-7 | DAMAGES

The only remedies provided for in the Sunshine Law are a declaration of the wrongful action as void and reasonable attorney fees. *Dascott v. Palm Beach County*, 988 So. 2d 47 (Fla. 4th DCA 2008), review denied, 6 So. 3d 51 (Fla. 2009) (equitable recovery of back pay not authorized for employment termination conducted in violation of Sunshine Law).

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APPENDIX



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