

Public Records – Requirements for Public Meetings

When it comes to the Sunshine Law, remember the three basic requirements for public meetings: public board meetings need to be properly noticed, they must be open to the public, and minutes must be taken.

The Government in the Sunshine Law, section 286.011, Florida Statutes, applies to public boards and commissions within this state, at the local as well as state level. Private entities may also be subject to the law if the private entity has been created by a public entity, if there has been a delegation of the public entity's governmental functions, or if the private organization plays an integral part in the decision-making process of the public entity. The courts and the Legislature are not subject to the Sunshine Law.

The Sunshine Law extends to the discussions and deliberations as well as formal action taken by a public board. There is no requirement that a quorum be present for a meeting of members of a public board to be subject to section 286.011. Instead, the law is applicable to any gathering, whether formal or casual, of two or more members of the same board to discuss some matter on which foreseeable action will be taken by the public board.

There are a few exemptions from the Sunshine Law, such as an exemption for certain discussions between a board and its attorney. Such exemptions are strictly construed and the conditions specified in the statute creating the exemption must be met.

Florida law requires that reasonable notice be given for all meetings subject to the Sunshine Law. The type of notice that must be given depends on the facts of the situation and the board involved. The purpose of the notice requirement is to ensure that the public is notified of the meeting in such a manner as will enable interested members of the press and the general public to attend.

The courts and the Attorney General's Office have stated the notice should contain the time and place of the meeting, as well as an agenda if it is available. The notice should be displayed prominently in the agency's offices in an area set aside for that purpose. For example, a city council meeting should have notices posted at city hall. Emergency meetings should be afforded the most appropriate and effective notice under the circumstances and special meetings should have at least 24 hours' notice. Using press releases and the media is also an effective means of providing notice; on matters of critical concern to the public, publication of a notice in local newspapers of general circulation is appropriate.

If a meeting is adjourned and reconvened later to complete the business from the adjourned meeting, the second meeting should also be noticed. Public boards should be aware, however, that while the Sunshine Law only requires "reasonable notice," the board may also be subject to notice requirements imposed by other statutes, codes or charters.

The Sunshine Law requires notice of meetings, not of individual items to be discussed at those meetings. Public boards are allowed to add items to the meeting agenda of a regularly noticed meeting, but the Attorney General's Office has advised boards to postpone formal action on

added items that are controversial. While the courts have recognized that boards carrying out certain executive functions may not be required to allow public participation, the Attorney General's Office has encouraged public boards to allow meaningful public participation on issues before the board. A public board should be sensitive to the community's concerns.

The Sunshine Law requires that meetings of a public board or commission be "open to the public." Where a large turnout of the public is expected for a meeting, public boards and commissions should take reasonable steps to ensure that the facilities where the meeting will be held will accommodate the anticipated turnout. Failure to do so may violate section 286.011 by unreasonably restricting access to the meeting. If a huge public turnout is anticipated for a particular issue and the largest available public meeting room cannot accommodate all of those who are expected to attend, the use of video technology may be appropriate.

In any case, reasonable steps to provide an opportunity for public participation in the proceedings should be considered. Additionally, a violation of the Sunshine Law may occur if board members discuss issues before the board in a manner not generally audible to the public attending the meeting. Such discussions of public business which are audible to only a select few may violate the "openness" requirements of the statute. Members of a board also may not vote by secret ballot or use codes in order to avoid identifying an individual.

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 at restaurants to conduct board or commission business. These meetings may have a "chilling" effect upon the public's willingness or desire to attend. Similarly out of town meetings may compromise the ability of the public to attend.

The Sunshine Law prohibits also public boards 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. The law also requires that public meetings be accessible to the physically disabled.

The Attorney General's Office has recognized that reasonable rules to ensure the orderly conduct of a public meeting may be adopted. For example, reasonable time limits on the amount of time an individual may address the board may be imposed. An agency may also impose certain security measures on members of the public entering a public building, such as requiring the public to go through metal detectors or to have their purses or briefcases searched. But this office has repeatedly advised against holding public meetings in locations where showing identification is a condition for entering the building. A board may also not prohibit the use of non-disruptive recording devices at public meetings.

Section 286.011 specifically requires that written minutes of a public meeting be promptly recorded and open to public inspection. This office has concluded that this means a brief written summary or series of notes reflecting the events of public meetings. They do not need to be verbatim transcripts of the meeting.

Action taken in violation of section 286.011 is void and would have to be reconsidered at a properly noticed and open meeting. A knowing violation of the Sunshine Law constitutes a second-degree misdemeanor. Additionally, the statute authorizes the imposition of a non-criminal infraction fine. Such actions would be brought by the state attorney in the judicial circuit where the violation occurred. Any citizen, however, may bring a civil action for injunctive or declaratory relief. Reasonable attorney fees will be assessed against a board found to have violated the Sunshine Law.

Public board meetings need to be properly noticed, open to the public, and minutes must be taken. Open government isn't just good government- it's the public's right.