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**Special Districts and Florida's Sunshine Law:
How to Stay in the Sun and Avoid the Shadows**

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Florida is known as the “Sunshine State,” and, in keeping with its nickname, Florida has seen fit to embrace the concept of government in the sunshine with both arms by adopting broad statutory language requiring public access to a transparent government. In addition to Florida’s liberal public records law,¹ which makes nearly every government document, note, email and thought available to the public, Florida enforces equally liberal policies regarding public access to government meetings – and government meetings mean more than many might think.

As “a local unit of special purpose, as opposed to general-purpose, government,”² a special district falls within the reach of these laws. Thus, given the broad scope of Florida’s Government in the Sunshine Law (hereinafter “Sunshine Law”),³ it is critical that special districts and their elected officials and staff understand the ramifications these laws can have on the day to day workings of the district. This article seeks to provide special districts with a primer on the ins and outs of the Sunshine Law, including highlights of specific scenarios and recent cases which shed light on its application.

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¹ See, § 119.01, et seq., Fla. Stat. (2007).

² § 189.403(1), Fla. Stat. (2007).

³ § 286.011, Fla. Stat. (2007).

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What it Means to Live Under the Sun – An Outline of the Law⁴

The Florida Sunshine Law is set forth in Section, 286.011. In short, the law requires that:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.⁵

The law also requires that minutes be taken for any public meeting and that these minutes be made available for public inspection.⁶ Actions taken in violation of the requirements of the Sunshine Law are void.⁷ In some instances, violations may be cured by reconsideration of the item at a subsequent full open hearing.⁸

The law begs several questions. First, what constitutes a “meeting” for purposes of the law? Second, who are the covered government boards, commissions, agencies and authorities? Third, what are the exceptions? And finally, what constitutes “reasonable notice” and what are other procedural requirements of the Sunshine Law? These questions are answered in turn below.

- *What is a Meeting?*

What is a “meeting” for purposes of the law? When put before them, Florida courts have developed the following rule:

The law is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to

⁴ The following discussion provides a brief outline of the law. For a full discussion, see OFFICE OF THE ATTORNEY GENERAL, GOVERNMENT-IN-THE-SUNSHINE MANUAL (First Amendment Foundation, 2007).

⁵ § 286.011(1), Fla. Stat. (2007).

⁶ § 286.011(2), Fla. Stat. (2007).

⁷ *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974) (stating that “[m]ere showing that the government in the sunshine law has been violated constitutes an irreparable public injury so that the ordinance is void Ab initio”).

⁸ *Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So. 2d 694, 695 (Fla. 3d DCA 1988) (holding that mere ratification of action taken at meeting held in violation of Sunshine Law is not sufficient to cure defects; must hold full public meeting as to the issue); *Blackford v. Sch. Bd. of Orange County*, 375 So.2d 578, 581 (Fla. 5th DCA 1979) (requiring decision by school board to reopen school, which was made at meeting held in violation of Sunshine Law, to be re-considered at public meeting).

discuss some matter on which foreseeable action will be taken by the public board or commission.⁹

Alone, a written communication from one board member to another about a matter on which foreseeable action will be taken does not violate the Sunshine Law so long as there is no interaction between the board members on the topic of the communication prior to properly-noticed public action being taken.¹⁰ However, the line is crossed when board members submit comments back and forth prior to properly noticed public action being taken.¹¹

The Sunshine Law applies to meetings whether held in person, over the phone, or pursuant to any other modern-day means of communication, including video and web-conferencing.¹² Further, the Sunshine Law cannot be avoided by “delegating” communications that have the effect of taking public action to lower level staff and employees or other liaisons.¹³

The answer to the first question – what is a meeting – leads to another question. What is an action “to be taken in the foreseeable future”? The following types of discussions have been held to fall within the provisions of Florida’s Sunshine law:

- “Collective inquiry and discussion stages” of a decision,¹⁴
- Executive work sessions to discuss policy matters,¹⁵

⁹ OFFICE OF THE ATTORNEY GENERAL, GOVERNMENT-IN-THE-SUNSHINE MANUAL, 15 (First Amendment Foundation, 2007), citing to *Hough v. Stembridge*, 278 So.2d 288 (Fla. 2d DCA 1973). See also, *City of Miami Beach v. Berns*, 245 So.2d 38 (Fla. 1971).

¹⁰ Op. Att’y Gen. Fla. 01-20 (2001) (email from one commissioner to others which contains only factual information regarding item to come before commission does not violate Sunshine Law); Op. Att’y Gen. Fla. 89-23 (1989) (stating that report drafted by one commissioner may be submitted to other commissioners without violating Sunshine Law).

¹¹ Op. Att’y Gen. Fla. 96-35 (1996); Op. Att’y Gen. Fla. 90-03 (1990).

¹² *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) (regarding telephone conversations); Op. Att’y Gen. Fla. 89-39 (1989) (regarding computers).

¹³ *IDS Props., Inc. v. Town of Palm Beach*, 279 So. 2d 353, 356 (Fla. 4th DCA 1973), *certified question answered sub. nom.*, *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974) (noting that “[i]t is axiomatic that public officials cannot do indirectly what they are prevented from doing directly. Those to whom 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 such public officials stand in the shoes of such public officials insofar as the application of the Government in the Sunshine Law is concerned”); *Citizens for a Better Royal Palm Beach, Inc. v. Vill. of Royal Palm Beach*, No. CL 91-14417 AA (Fla. 15th Cir. Ct. May 14, 1992) (prohibiting city manager from serving as liaison to communicate board members opinions to one another); Op. Att’y Gen. Fla. 74-84 (1974) (stating that investigation or hearing conducted on behalf of board falls within Sunshine Law).

¹⁴ See, *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974) (reasoning that “[A]n informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance,” citing to *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors*, 263 Cal.App.2d 41, 50 (Cal. App. 3d Dist. 1968)).

¹⁵ Op. Att’y Gen. Fla. 76-102 (1976).

- Conciliation conferences,¹⁶
- Workshop meetings,¹⁷ and
- Conference sessions held prior to a public meeting.¹⁸

In short, Florida's Sunshine law is "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."¹⁹ Thus, discussions regarding purchasing or bid proposals are subject to the law as are real property transaction negotiations.²⁰

Generally, civil court proceedings are presumed to be open to the public. In order to close civil proceedings, the strict and detailed test set forth by the Florida Supreme Court in Barron v. Fla. Freedom Newspapers, Inc. must be met.²¹ Depositions, however, are generally not required to be public pursuant to Florida's Sunshine Law.²² As to mediation, Florida courts have held that mediation is subject to the Sunshine Law, and thus, no more than one member of the board or commission of the government party may attend the mediation at one time.²³

Meetings wherein personnel issues are discussed are not exempted from coverage of the Sunshine Law.²⁴ Complaint review board meetings, employee termination hearings and grievance discussions must be held in the Sunshine.²⁵ Similarly, meetings of a board or commission to evaluate employee performance or to interview employees serving at the pleasure

¹⁶ Op. Att'y Gen. Fla. 74-358 (1974).

¹⁷ Op. Att'y Gen. Fla. 74-94 (1974).

¹⁸ Op. Att'y Gen. Fla. 74-62 (1974).

¹⁹ OFFICE OF THE ATTORNEY GENERAL, GOVERNMENT-IN-THE-SUNSHINE MANUAL, 22 (First Amendment Foundation, 2007).

²⁰ *City of Miami Beach v. Berns*, 245 So.2d 38, 40 (Fla. 1971) (prohibiting city commission from closing meeting to public where condemnation issues were to be discussed); *Silver Express Co. v. Dist. Bd. of Lower Tribunal Trs.*, 691 So. 2d 1099, 1100 (Fla. 3d DCA 1997) (holding that meeting wherein proposals were reviewed by committee was covered by Sunshine Law where, "[t]he record reflects that the committee's function was to weed through the various proposals, to determine which were acceptable and to rank them accordingly. In other words, the committee's action helped to crystallize the decision to be made by the College").

²¹ 531 So. 2d 113 (Fla. 1988).

²² *Palm Beach Newspapers, Inc. v. Burk*, 504 So. 2d 378, 384 (Fla. 1987) (holding that, "[d]iscovery depositions are judicially compelled for the purpose of allowing parties to investigate and prepare their case, but, unlike a suppression hearing, they are not judicial proceedings 'for the simple reason that there is no judge present, and no rulings nor adjudications of any sort are made by any judicial authority,'" citing *Tallahassee Democrat, Inc. v. Willis*, 370 So.2d 867, 872 n. 4 (Fla. 1st DCA 1979)).

²³ *O'Connell v. Bd. of Trs.*, 1 F.L.W. Supp. 285 (Fla. 7th Cir. Ct. Feb 9, 1993). See also, Fla.R. Civ. P. 1.720(b).

²⁴ *Times Publ'g Co. v. Williams*, 222 So. 2d 470, 476 (Fla. 2d DCA 1969), *disapproved in part on other grounds* (prohibiting school board to close meeting wherein personnel issues were to be discussed).

²⁵ *News-Press Publ'g Co. v. Wisher*, 345 So. 2d 646 (Fla. 1977) (disciplinary action); *Palm Beach County Classroom Teacher's Ass'n v. Sch. Bd. of Palm Beach County*, 411 So. 2d 1375 (Fla. 4th DCA 1982) (grievance hearing); *Barfield v. City of West Palm Beach*, No. CL94-2141-AC (Fla. 15th Cir. Ct. May 6, 1994) (complaint review board).

of the board are subject to the Sunshine Law.²⁶ Meetings of selection committees are subject to the Sunshine Law, unless the committee's sole function is to collect information on applicants.²⁷

- *Whose Meetings Are Covered?*

The second question regarding the applicability of Florida's Sunshine Law asks what government entities are required to operate in the sun? The answer is that special districts are among those covered. Further, advisory boards created by special districts are subject to the law, unless the committees are established for fact finding only.²⁸

More important for special districts is the question of whether any private consultants that deal with the district are covered by the Sunshine Law by virtue of their association with the public entity. Generally, the Sunshine Law does not apply to private entities. However, where public entities have delegated the performance of their public duties or services to a private entity – the private entities actions with regard to those public duties are covered.²⁹

While the board and commissions of special districts and other qualified government entities are required to operate in the Sunshine, staff members and aides are not generally covered by the Sunshine Law.³⁰ As mentioned previously, however, where staff members are delegated significant responsibilities and are asked to participate in committees that oversee public functions, such committee's meetings fall under the coverage of the Sunshine Law.³¹ Staff fact-finding panels remain outside of the Law's coverage.³²

²⁶ Op. Att'y Gen. Fla. 89-37 (1989) (job evaluations); Op. Att'y Gen. Fla. 71-389 (1971) (interviews).

²⁷ *Wood v. Marsten*, 442 So. 2d 934, 938 (Fla. 1983) (in holding that selection committee was subject to Sunshine Law requirements, the court noted that “[t]he search-and-screen committee had an admitted “fact-gathering” role in the solicitation and compilation of applications. It had an equally undisputed decision-making function in screening the applicants. In deciding which of the applicants to reject from further consideration, the committee performed a policy-based, decision-making function delegated to it by the president of the university through the faculty as a whole”); *Cape Publ'ns, Inc. v. City of Palm Bay*, 473 So. 2d 222, 225 (Fla. 5th DCA 1985) (noting that “it is the nature of the act to be performed, not the make-up of the group, that determines the application of the statute”).

²⁸ See, *supra*, note 27, *Cape Publ'ns, Inc.*, 473 So. 2d at 225.

²⁹ *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 478 (Fla. 1974) (holding that committee formed by city council to act on its behalf was subject to the requirements of the Sunshine Law).

³⁰ *Occidental Chem. Co. v. Mayo*, 351 So. 2d 336, 341 (Fla. 1977), *disapproved on other grounds*, *Citizens v. Beard*, 613 So. 2d 403 (Fla. 1992) (holding staff not subject to the Sunshine Law); Op. Att'y Gen. Fla. 89-39 (1939) (stating that commissioners' aides are not subject to the Sunshine Law). See also, *supra*, note 27, *Wood*, 442 So. 2d at 938.

³¹ See, *supra*, note 27, *Wood*, 442 So. 2d at 938; *Silver Express Co. v. Dist. Bd. of Lower Tribunal Trs.*, 691 So. 2d 1099, 1101 (Fla. 3d DCA 1997); *News-Press Publ'g Co. v. Carlson*, 410 So. 2d 546, 547-48 (Fla. 2d. DCA 1982).

³² *Lyon v. Lake County*, 765 So. 2d 785, 789 (Fla. 5th DCA 2000) (holding that “[a]n exception to the applicability of the sunshine law to advisory committees has been recognized for committees related to fact-finding only”); *Bennet v. Warden*, 333 So. 2d 97, 99-100 (Fla. 2d DCA 1976) (holding that fact-finding committee not subject to requirements of Sunshine Law).

An interesting question arises when a governmental board member is also an employee and/or staff member of the covered entity. The Office of the Attorney General states that such persons are not covered by the Sunshine Law so long as their activities fall within their employment duties and do not relate to matters subject to future board action.³³

- *What are the Exemptions?*

Given the Sunshine Law's grounding in the Florida Constitution,³⁴ there are few exemptions from its broad coverage. In fact, the Sunshine Law reaches beyond even Florida's liberal Public Records Law. For instance, while certain confidential public records are exempted from the Public Records Law requirements, meetings wherein such confidential public records are discussed are not necessarily exempt.³⁵

Exemptions to the open meeting requirements of the Constitution and the Sunshine Law may only be established pursuant to a general law passed by a two-thirds vote of each house.³⁶ Below is a discussion of a few limited exceptions to the reach of the Sunshine Law.³⁷

Attorney-Client Work Sessions

While discussion between a government entity and its attorney are generally not exempt from the requirements of the law, certain discussions with regard to pending litigation are exempted. Specifically, the Sunshine Law 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

³³ Op. Att'y Gen. Fla. 92-79 (1992).

³⁴ Art. 1, s. 24(b), Fla. Const.

³⁵ § 119.07(8), Fla. Stat. (2007); Op. Att'y Gen. Fla. 04-44 (2004).

³⁶ Art. 1, s. 24(c), Fla. Const.

³⁷ Exemptions not discussed above include exemptions for abuse meetings pursuant to §§ 383.412, 741.3165(2), 402.165(8)(c), and 402.166(8)(c), Fla. Stat. (2007); education meetings wherein material found in student records will be discussed pursuant to § 1002.22(3)(c), Fla. Stat. (2007); student expulsion hearings pursuant to § 1006.07(1)(a), Fla. Stat. (2007); some hearings involving minors pursuant to §§ 39.507(2), 39.827(4), 39.809(4), 63.162(1), and 918.16, Fla. Stat. (2007); hearings to obtain HIV test results pursuant to § 381.004(3)(e)9, Fla. Stat. (2007); and various types of meetings relating to public hospitals and health facilities and insurance meetings pursuant to Chapter 365 and §§ 381.055(3), 394.907(7), 400.119(2)(a), 401.425(5), 766.101(7)(c), 945.6032(3), 1004.30(3), 409.91196(2), 400.0077(2), 1004.43(9), 1004.4472(3), 624.40851(2), 627.351(6)(w)2, 627.311(4)(b), 408.7056(14)(b), 627.0628(3)(e)2, 633.175(5), 631.724, 631.932, and 440.3851(3), Fla. Stat. (2007).

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 discussions and proceedings, the names of all persons present at any time, and the names of 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 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.³⁸

This detailed exception, in keeping with Florida's liberal application of the Sunshine Law, is construed narrowly by Florida courts.³⁹ For instance, the requirement above that the government entity's attorney "advise the entity at a public meeting that he or she desires advice concerning the litigation," means just that – the attorney must make a request for a confidential attorney-client session at a public meeting.⁴⁰ Further, "substantial compliance" with the

³⁸ § 286.011(8), Fla. Stat. (2007).

³⁹ *City of Dunnellon v. Aran*, 662 So. 2d 1026, 1027 (Fla. 5th DCA 1995).

⁴⁰ Op. Att'y Gen. Fla. 04-35 (2004).

requirements of the exemption will not suffice.⁴¹ It is important to note that staff members are not permitted to attend such closed attorney-client sessions.⁴²

Discussions at closed attorney-client sessions are limited to settlement negotiations and strategy discussions regarding litigation expenses.⁴³ No final decision as to settlement may be made during the session.⁴⁴ Note that meetings wherein the board or commission is acting in a quasi-judicial capacity are not exempt from the requirements of the Sunshine Law.⁴⁵

Waiver of Sovereign Immunity in Tort Actions.

Another statutory exemption to the coverage of the Sunshine Law relates to tort claims filed against a government agency pursuant to Florida Statutes, Chapter 768. Specifically, Section 768.28 provides that “[p]ortions of meetings and proceedings conducted pursuant to any risk management program or which relate solely to offers of compromise of claims filed with the risk management program are exempt from the provisions of s. 286.011 and s. 24(b), Art. I. of the State Constitution.”⁴⁶ This exemption applies to the transcript of the covered meeting.⁴⁷ A claim must have been filed pursuant to an established risk management program pursuant to Section 768.28(16)(a) in order for this exemption to adhere.

Collective Bargaining

Pursuant to Chapter 447, Florida Statutes, collective bargaining strategy sessions are exempted from the requirements of the Sunshine Law.⁴⁸ Specifically, Section 447.605(1), Florida Statutes states that:

All discussions between the chief executive officer of the public employer, or his or her representative, and the legislative body or the public employer relative to collective bargaining shall be closed and exempt from the provisions of s. 286.011.

However, Section 447.606 explicitly excludes collective bargaining negotiation sessions from this exception.⁴⁹

⁴¹ *City of Dunnellon v. Aran*, 662 So. 2d 1026, 1027 (Fla. 5th DCA 1995).

⁴² *Sch. Bd. of Duval County v. Fla. Publ’g Co.*, 670 So. 2d 99, 100-101 (Fla. 1st DCA 1996) (noting that “[t]he amendment was not, however, intended to permit nondesignated personnel to discuss settlement matters in private with the agency”).

⁴³ *Id.*

⁴⁴ *Id.* at 101; *Zorc v. City of Vero Beach*, 722 So. 2d 891 (Fla. 4th DCA 1998).

⁴⁵ *Canney v. Bd. of Pub. Instruction of Alachua County*, 278 So. 2d 260, 263-264 (Fla. 1973).

⁴⁶ § 768.28(16)(c), Fla. Stat. (2007).

⁴⁷ § 768.28(16)(d), Fla. Stat. (2007).

⁴⁸ § 447.605(1), Fla. Stat. (2007).

Security Meetings

Another limited exception to the Sunshine Law's requirements – including the notice requirement – is made for meetings wherein the security systems for public property are discussed.⁵⁰

- *What Are the Procedural Requirements of the Law?*

The Sunshine Law has several attendant procedural requirements. Preliminarily, all Sunshine meetings must be properly noticed. Specifically, the public must be provided “reasonable notice” of any meeting covered by the Sunshine Law. Unfortunately, the answer to the question of what constitutes reasonable notice is not clear and depends upon the specific facts and circumstances at issue. There are two important variables to reasonable notice. The first is where the notice is published and/or posted. The second is when the notice is published and/or posted.

Given the lack of statutory guidance as to the specific requirements of proper notice, the Attorney General has suggested the following guidelines:

1. The notice should contain the time and place of the meeting and, if available, an agenda (or if no agenda is available, subject matter summations might be used);
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;
3. emergency sessions should be afforded the most appropriate and effective notice under the circumstances and special meetings should have at least 24 hours reasonable notice to the public; and
4. use of press releases and/or phone calls to wire services and other media is highly effective. On matters of critical public concern such as rezonings, budgeting, taxation, appointment of public officers, etc., advertising in the local newspapers of general circulation would be appropriate.⁵¹

⁴⁹ § 447.605(2), Fla. Stat. (2007) (“The collective bargaining negotiations between a chief executive officer, or his or her representative, and a bargaining agent shall be in compliance with the provisions of s. 286.011.”).

⁵⁰ § 281.310, Fla. Stat. (2007); § 281.0113(1), Fla. Stat. (2007); Op. Att’y Gen. Fla. 93-86 (1986).

⁵¹ OFFICE OF THE ATTORNEY GENERAL, GOVERNMENT-IN-THE-SUNSHINE MANUAL, 37 (First Amendment Foundation, 2007); Op. Att’y Gen. Fla. 73-170 (1973).

Meetings adjourned until a later date must also be noticed.⁵² Quasi-judicial meetings and meetings wherein individual rights are discussed are subject to the notice requirements of Florida Statute, Section 286.0105.⁵³ It should be noted that the notice requirements of the Sunshine Law are in addition to any other applicable statutory notice provisions relevant to the subject matter of the meeting to be held.

The Sunshine Law does not require that an agenda be available to the public prior to the meeting, and boards are not prohibited from discussing items which were not included in a previously distributed agenda.⁵⁴ Nonetheless, the description of the subject matter to be discussed at a meeting bears on the question of “reasonable notice.”

Another procedural aspect of the Sunshine Law relates to the location of public meetings. The guiding principal is that public meetings should not be held in locations that thwart public attendance.⁵⁵ Thus, public meetings should generally be held at a nearby location and the facilities should be of adequate size, allow the public to hear all relevant discussions and should provide accommodations to the physically handicapped.⁵⁶

Like all of the requirements of the Sunshine Law, the guiding principle to the application of the Law’s procedural requirements is whether the public is given a reasonable opportunity to attend and participate in the meetings. Some restrictions can be applied to the public’s attendance and participation at open meetings. Governing bodies are entitled to adopt reasonable rules to govern the public behavior and participation at public meetings.⁵⁷ For instance, it is appropriate for a governing body to require that members of the public restrict their comments to the agenda item at issue and a governing board may prohibit disruptive conduct.⁵⁸ However, government entities may not arbitrarily prohibit the use of non-disruptive cameras or recording devices by members of the public.⁵⁹

⁵² Op. Att’y Gen. Fla. 90-56 (1990).

⁵³ § 286.0105, Fla. Stat. (2007). *See also*, Op. Att’y Gen. Fla. 81-06 (1981).

⁵⁴ *Law and Info. Servs. Inc. v. City of Riviera Beach*, 670 So. 2d 1014, 1016 (Fla. 4th DCA 1996) (stating that “there is no requirement in the act in question that a governmental body give notice of potential deviation from a previously announced agenda”).

⁵⁵ *City of Miami Beach v. Berns*, 245 So.2d 38, 41 (Fla. 1971) (holding that a “secret meeting occurs when public officials meet at a time and place to avoid being seen or heard by the public”). *See also*, *Bigelow v. Howze*, 291 So. 2d 645, 647-648 (Fla. 2d DCA 1974).

⁵⁶ § 286.011(6), Fla. Stat. (2007) provides that “[a]ll persons subject to subsection (1) are prohibited from holding meetings at any facility or location 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 the facility.” *See also* § 286.26, Fla. Stat. (2007) regarding accessibility of public meetings to the physically handicapped.

⁵⁷ *Rowe v. City of Cocoa*, 258 F.3d 800 (11th Cir. 2004); *Jones v. Heyman*, 888 F. 2d 1328 (11th Cir. 1989).

⁵⁸ *Id.*

⁵⁹ *Pinellas County Sch. Bd. v. Suncam, Inc.*, 829 So.2d 989 (Fla. 2d DCA 2002) (holding that school board was not allowed to prohibit unobtrusive videotaping at meeting); Op. Att’y Gen. Fla. 77-122 (1977).

How the Sun Shines in Florida – Implementation

The Sunshine Law's coverage is strictly enforced with what can be harsh penalties. The law provides:

Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.⁶⁰

In addition to the above, individuals who violate the Sunshine Law may be liable for attorney's fees.⁶¹ Conviction of a second degree misdemeanor may result in a prison sentence not to exceed 60 days and/or a fine of up to \$500. In addition, public officials who violate the law may be suspended or removed from office at the Governor's discretion pursuant to Section 112.52, Florida Statutes.

The Sunshine law provides that "[t]he circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of the state."⁶² A complaint seeking injunctive relief must allege the name and/or a description of the public officials who are allegedly in violation of the law.⁶³

The seriousness of these potential penalties is best understood through a real-life case study.

W.D. Childers represented Pensacola as a member of the Florida legislature for nearly 30 years and was credited for ushering through legislation which led to a \$13 billion settlement with the tobacco industry.⁶⁴ Childers has been described as "an iconic figure, his legend growing

⁶⁰ § 286.011(3)(a)-(b), Fla. Stat. (2007). Section 286.011(3)(c), Florida Statutes provides that "conduct which occurs outside the state which would constitute a knowing violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083."

⁶¹ § 286.011(4) and (5), Fla. Stat (2007).

⁶² § 286.011(2), Fla. Stat. (2007).

⁶³ *Deerfield Beach Publ'g, Inc. v. Robb*, 530 So. 2d 510, 510-511 (Fla. 4th DCA 1988).

⁶⁴ *In Trial, Suspended Official Asks Help of Old Ally*, ST. PETERSBURG TIMES, June 23, 2002.

with each election cycle. He was the redneck politician who chewed tobacco and used cuss words.”⁶⁵

Then, in September of 2002, the former Florida Senate President, who was serving as Chairman of the Escambia County Commission, was charged and eventually convicted with five counts of violating the Sunshine Law.⁶⁶ Childers, along with three other County Commissioners, including Michael Bass, Willie Junior and Terry Smith, were implicated in a bribery scandal that involved secret meetings between the commissioners regarding the County’s purchase of a soccer complex.⁶⁷ Childers was allegedly bribed by the owner of the complex to vote in favor of the County’s purchase of the property.⁶⁸

After his conviction, at the age of 69, Childers was sentenced to serve 60 days in jail. Childers was the first public official to serve jail time for violating the Sunshine Law.⁶⁹ Governor Jeb Bush suspended Childers from his seat on the commission.

Is it Sunny or Shady? – “What if” Scenarios Shed Some Light

With the above outline of the Sunshine Law in mind, review the following scenarios and answer true or false for each (see footnotes for answers and explanation):

1. The Sunshine Law applies to:
 - a. Members-elect to a board or commission?⁷⁰
 - b. Candidates for a seat on a board or commission?⁷¹
 - c. Mayor and mayor-elect?⁷²
 - d. Meetings between members of different boards?⁷³
 - e. Meetings between a mayor and a member of a city council?⁷⁴

⁶⁵ Steve Bousquet, *A Career in Dark, Brought to Light*, ST. PETERSBURG TIMES, May 4, 2002.

⁶⁶ *Id.*; *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).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ True. *See, Hough v. Stembbridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973) (holding that individuals are subject to Sunshine Law upon being elected to office).

⁷¹ False. *See, Op. Att’y Gen. Fla. 92-05* (1992).

⁷² False. *See, Op. Att’y Gen. Fla. 93-04* (1994).

⁷³ False. *See, Rowe v. Pinellas Sports Auth.*, 461 So. 2d 72, 75 (Fla. 1984) (finding no violation of the Sunshine Law where “no two individuals who were members of the same governing body were present at any one of these discussions, no decision-making official acts could occur that would violate the act”).

- f. Meetings between a board member and his or her alternate?⁷⁵
- g. Meetings between an ex officio, non-voting board member and a voting member of the board?⁷⁶
- h. Community forums sponsored by private organizations?⁷⁷
- i. Board members attending meetings of another public board?⁷⁸
- j. Board members attending social events?⁷⁹
- k. A husband and wife serving on the same board?⁸⁰
2. A board or commission member may abstain from voting?⁸¹
3. Meeting minutes must be transcribed verbatim?⁸²
4. Meetings must be recorded?⁸³
5. Board members may vote by secret ballot?⁸⁴

Keeping Your District Out of the Shadows - Conclusion

Florida courts consistently hold that the Sunshine law is to be construed “so as to frustrate all evasive devices.”⁸⁵ Given the broad reach of the Sunshine Law, and Florida court’s strict application of its terms, here are some tips on how to remain within the letter of the Sunshine Law.

- *Understand the Law*

It is implicit that any and all board members and staff persons of all special districts have a working knowledge of the requirements of the Sunshine Law. To aid local governments and the public, the Office of the Attorney General publishes its Government-in-the-Sunshine Manual each year. The Manual provides a user-friendly guide to the application of Florida’s Sunshine

⁷⁴ True if the mayor is a member of the city council, False if the mayor is not a member of the city council and has no power to vote. *See*, Op. Att’y Gen. Fla. 90-26 (1990); Op. Att’y Gen. Fla. 85-36 (1985); Op. Att’y Gen. Fla. 83-70 (1983).

⁷⁵ False. *See*, Op. Att’y Gen. Fla. 88-45 (1988).

⁷⁶ True. *See*, Op. Att’y Gen. Fla. 05-18 (2005).

⁷⁷ False so long as members present do not discuss issues that may foreseeably come before them for future action. *See*, Op. Att’y Gen. Fla. 94-62 (1994); Op. Att’y Gen. Fla. 92-05 (1992).

⁷⁸ False. *See*, Op. Att’y Gen. Fla. 00-68 (2000); Op. Att’y Gen. Fla. 98-14 (1998).

⁷⁹ False. *See*, Op. Att’y Gen. Fla. 92-79 (1992).

⁸⁰ False. *See*, Op. Att’y Gen. Fla. 89-06 (1989).

⁸¹ False. § 286.012, Fla. Stat. (2007) provides that “[n]o member of any state, county or municipal government board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling or other official act is to be taken or adopted may abstain from voting ... a vote shall be recorded or counted for each such member present except when, 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, F.S.”

⁸² False. *See*, Op. Att’y Gen. Fla. 82-47 (1982).

⁸³ False. *See*, Op. Att’y Gen. Fla. 86-21 (1986).

⁸⁴ False. *See*, Op. Att’y Gen. Fla. 73-264 (1973).

⁸⁵ *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974).

Law as well as the Florida Public Records Law. No special district employee or board member should be without a copy of the Manual.

- *Public perception is everything*

In the modern world, local public officials live under the constant glare of the media. This reality can make the work of governing difficult for board members and staff. While it may seem easier to work out difficult and controversial issues outside the eye of the camera and pen, failing to abide to the letter of the Sunshine Law can taint a governing body and the entity it serves for years. Controversies come and go, but the appearance of corruption may never subside.

- *When in doubt – wear sunscreen*

The lesson is simple – when in doubt, government entities, including special districts should err on the side of caution. If there is a question as to whether or not a given meeting must be open to the public, assume that it must be. If there is a question as to whether or not notice should be posted at one location versus being published in the local paper, do both. If the subject matter of a conversation may constitute a matter on which foreseeable action may be taken, refrain from speaking about that topic outside of a public forum. As evidenced by the story of W.D. Childers, life in the shadows can be awfully cold.