

# A Summary of Florida's Government in the Sunshine Law

## September 22, 2005

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### 1. Scope of the Sunshine Law

The Sunshine Law provides public access to governmental proceedings, including meetings of public boards or commissions. § 286.011, Fla. Stat. (2004)

Section 286.011, Florida Statutes, provides that 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 meeting must be taken.

### 2. Definition of a Meeting

The Sunshine Law does not only apply to formal proceedings by boards and commissions. It applies to any gathering, casual or not, concerning matters upon which *foreseeable action* may be taken by the applicable agency or organization. *See Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973). Meetings in defiance of the Sunshine Law are those that are “violative of the statute’s spirit, intent and purpose.” *Id.*

Because the Sunshine Law applies to *any* gathering, formal or casual, concerning matters upon which action may be taken, the statute also applies to discussions over the telephone or communications via computer.

### 3. Individuals/Organizations Subject to the Sunshine Law

The Sunshine Law applies to any meeting between two or more members 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.” *See* § 286.011, Fla. Stat. (2004). The courts have stated that it was the Legislature’s intent to bind “every board or commission of the state, or of any county or political subdivision over which it has domain and control.” *Times Publishing Company v. Williams*, 222 So. 2d 470 (Fla. 2d DCA 1969). All public agencies, including elected and appointed boards or commissions and even collegial bodies, are subject to the statute. The Florida Department of Transportation (the Department) is a public agency and thus falls under the authority of the Sunshine Law.

#### 3(a). Advisory Boards or Committees

Advisory boards or committees appointed by public agencies are subject to the Sunshine Law, even if their recommendations are not acted upon. *See* AGO 82-35, *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). A limited exception applies to committees established strictly for fact-finding such as information gathering and reporting.

### **3(b). Staff Members**

The meetings of staff members of a board or commission covered by the Sunshine Law are generally not subject to the Sunshine law. This exception also applies to staff members of advisory boards or committees. *See* § 286.011, Fla. Stat., *Occidental Chemical Co. v. Mayo*, 351 So. 2d 336 (Fla. 1977). However, when a staff member ceases to function in a staff capacity and is appointed to a committee which is delegated authority to make recommendations to a board or official, the staff member loses his or her identity as staff while working on the committee and the Sunshine Law applies to the committee. Thus, 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.

### **3(c). Purchasing or Bid Evaluation Committees**

Generally committees appointed by agencies subject to Sunshine Law to consider purchases or bids by contractors are themselves subject to the Sunshine Law. However, meetings involving confidential bid estimates are not subject to the Sunshine Law because the Department's contract award process has been adopted in recognition of Sunshine Law requirements.

## **4. Notice Requirements**

As previously mentioned, meetings covered by the Sunshine Law require that "reasonable notice" be given beforehand. The Attorney General's Office has suggested notice guidelines, which include: 1) the notice should contain the time and place of the meeting and, if available, an agenda, 2) the notice should be prominently displayed in the area in the agency's office set aside for that purpose, 3) emergency sessions should be afforded the most effective notice under the circumstances and 4) effective methods include press releases, phone calls to wire services, and advertising in local newspapers of general circulation.

## **5. Consequences for Failure to Comply**

The consequences for violation of the Sunshine Law vary. There can be criminal penalties if any board or commission member *knowingly* violates the Sunshine Law, including the possibility of a second degree misdemeanor charge (which can include imprisonment and/or a fine). Additional consequences include removal from office, non-criminal penalties such as fines, attorney's fees, and civil actions for injunctive or declaratory relief.

Violation of the Sunshine Law also renders actions taken by boards or commissions invalid. Section 286.011, Florida Statute provides that no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting.

## **6. Conclusion**

It is advisable to be well acquainted with Florida's Government-in-the-Sunshine Law. The overarching policy behind the law is very simple. Actions should be analyzed in light of the Sunshine Law's spirit and intent to provide the public a right of access to government proceedings.

**FLORIDA DEPARTMENT OF TRANSPORTATION  
GOVERNMENT IN THE SUNSHINE  
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**Caveat:** This briefing paper is intended as an overview of the complex legal issues involving Florida's Government in the Sunshine Law, Public Record Law, and Ethics Laws. Readers are cautioned that these laws contain traps for the unwary, which can cause seemingly innocent activities to become a crime. The advice of an attorney should be sought for their application to particular circumstances.

## **OPEN MEETINGS**

All meetings at which public business is discussed or transacted shall be duly noticed and open to the public.<sup>1</sup>

**YOU CANNOT:**

- Discuss with any other member any item that is under consideration by the authority, except at a duly noticed public meeting

**YOU CAN:**

- Discuss other matters with other members at any time.
- Discuss authority business with any person who is not a member, except that the person cannot act as a liaison between or among members.

A continuing concern is the sending of e-mail by a member to other members. An e-mail that states factual background material is permissible<sup>2</sup> so long as there is no interaction between or among members. E-mails that solicit comments from other members or that circulate responses from members are prohibited.<sup>3</sup>

Minutes of each meeting must be taken, which must include a record of all voting.<sup>4</sup>

## **PUBLIC RECORDS**

Records of "any board or commission of any state agency or authority of any agency or authority of any county, municipal corporation, or political subdivision," except those that are specifically exempted by statute, are public records and must be available for inspection and copying by any person at a reasonable place and time.<sup>5</sup>

A public record is defined very broadly and includes tape recordings, hand written notes, and information in a computer.<sup>6</sup> All materials made or received in connection with official business regardless of form are to be open for public review unless exempted by the legislature. This includes notes that are intended to be kept as a record or that are circulated or communicated to another.<sup>7</sup> However, notes prepared for personal use are not public records.<sup>8</sup>

Electronic mail comes within the public records law, and any e-mail sent or received relating to official business must be made available to the public if requested. As noted above, the Public Meeting Law prohibits interactive e-mail between or among members relating to official business of the authority.

## ETHICS

Certain provisions of the Florida Code of Ethics for Public Officers and Employees, Sections 112.311-112.326, Florida Statutes, apply. It is not the intent of this summary to cover the multifarious aspects of governmental ethics. For more information, visit the Commission of Ethics Website: <http://www.ethics.state.fl.us/> Certain key provisions are summarized below.

- Prohibited actions or conduct:<sup>9</sup> Solicitation or acceptance of gifts or unlawful compensation to influence official action; misuse of public position; or use of information not available to the public generally for personal pecuniary gain for themselves or anyone else. Note: For the gifts that are allowed by the statute,<sup>10</sup> the Governor's Code of Ethics places further restrictions.<sup>11</sup>
- Restricted business and contractual relationships:<sup>12</sup> Certain restrictions and prohibitions apply to members or their relatives.
- Voting Conflicts of Interest:<sup>13</sup> Persons present at a meeting are required to vote, unless the member has a voting conflict of interest, in which case the member may abstain from voting.<sup>14</sup> A voting conflict occurs when the measure being voted on inures to the private gain or loss of the member, a relative, the member's employer, or a client of the member. The member must disclose the conflict prior to participating in discussion or voting on the matter, or if unknown at the time, as soon as possible. The member must file Commission on Ethics Form 8A<sup>15</sup> with the recording secretary within fifteen days of the vote.

### Reference Materials:

Attorney General's Website: <http://myfloridalegal.com/sunshine>

*Government-in-the-Sunshine Manual*, First Amendment Foundation, Tallahassee, FL

First Amendment's Website: <http://www.floridafaf.org/>

### ENDNOTES:

<sup>1</sup> Article 1, Section 24(b), Florida Constitution, and Section 286.011, Florida Statutes (Florida Government in the Sunshine Law), apply to agencies of the state. Sections 343.80-343.89, Florida Statutes, created the Northwest Florida Transportation Corridor Authority as an agency of the state.

<sup>2</sup> Attorney General Opinion 2001-20, March 20, 2001.

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<sup>3</sup> Attorney General Informal Opinion, October 31, 2000.

<sup>4</sup> Sections 286.011(2) and 286.012, Florida Statutes.

<sup>5</sup> Article I, Section 24(a), Florida Constitution; Section 119.07, Florida Statutes.

<sup>6</sup> Section 119.011(1), Florida Statutes; Orange County v. Florida Land Co., 450 So. 2d 341 (Fla. 5th DCA 1984).

<sup>7</sup> Shevin v. Byron, Harless, Schaffer, Reid & Assoc., Inc., 379 So. 2d 633 (Fla. 1980).

<sup>8</sup> Times Publishing Co. v. City of St. Petersburg, 558 So. 2d 487 (Fla. 2d DCA 1990).

<sup>9</sup> Section 112.313(7), Florida Statutes.

<sup>10</sup> Sections 112.312(12) and 112.313(2), Florida Statutes.

<sup>11</sup> Governor Bush's Code of Ethics, available at:

<http://www.myflorida.com/myflorida/government/policies/ethicscode.html>

<sup>12</sup> Sections 112.313(3), (7), and (12), Florida Statutes.

<sup>13</sup> Section 112.3143, Florida Statutes.

<sup>14</sup> Section 286.012, Florida Statutes.

<sup>15</sup> [http://www.ethics.state.fl.us/forms/Form8a\\_2000.PDF](http://www.ethics.state.fl.us/forms/Form8a_2000.PDF).