



FLORIDA'S SUNSHINE MANUAL SUBPART 1-D: NOTICE AND PROCEDURE

Official Handbook on Public Records Laws

{Publish Date: 3/9/2023}

Part 1-D
Notice and Procedures

E: TextBook.Discrimination@outlook.com
W: www.TextBookDiscrimination.com

visit TBD's [website](#) for the most up-to-date information

TABLE OF CONTENTS | PART 1 | SUBPART D

Section	Title	Page
1-D-1	Agenda	5
1-D-2	Location of Meetings	7
1-D-3	Minutes	11
1-D-4	Notice Requirements	14
1-D-5	Public Comment	19
1-D-6	Restrictions on Public Attendance	22
1-D-7	Time and Length of Meeting	24
1-D-8	Use of Codes or Preassigned Numbers in Order to...	25
1-D-9	Voting	26
-	n/a	Appendix
		29



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: 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. Stemberge*, 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.

(Florida Office of the Attorney General // © March 9, 2023)



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).

(Florida Office of the Attorney General // © March 9, 2023)



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.

(Florida Office of the Attorney General // © March 9, 2023)



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).

(Florida Office of the Attorney General // © March 9, 2023)



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.

(Florida Office of the Attorney General // © March 9, 2023)



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).

(Florida Office of the Attorney General // © March 9, 2023)



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."

(Florida Office of the Attorney General // © March 9, 2023)



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").

(Florida Office of the Attorney General // © March 9, 2023)



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").

(Florida Office of the Attorney General // © March 9, 2023)



APPENDIX



COPYRIGHT NOTICE

TextBookDiscrimination.com is not the author of this handbook. Instead, TextBookDiscrimination.com merely re-printed and reformatted it for easier use.

ORIGINAL SOURCE

<u>#</u>	<u>Item</u>	<u>Link</u>
1	Original Source	MyFloridaLegal.com

INTERACTIVE VERSION

<u>#</u>	<u>Item</u>	<u>Link</u>
1	Web	TextBookDiscrimination.com/Handbooks/PublicRecords/FL/S1D

CONTACT INFORMATION

E: TextBook.Discrimination@outlook.com
W: www.TextBookDiscrimination.com

Congratulations! You're now **booked up** on **Florida's Sunshine Manual** (*Florida's Office of the Attorney General*)!

