



FLORIDA'S SUNSHINE MANUAL SUBPART 1-E: STATUTORY EXEMPTIONS

Official Handbook on Public Records Laws

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Part 1-E
Statutory Exemptions

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FLORIDA SUNSHINE MANUAL

PART 1

GOVERNMENT IN THE SUNSHINE LAW



FLORIDA'S SUNSHINE MANUAL

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PART: 1 GOVERNMENT IN THE SUNSHINE LAW

SUBPART: E STATUTORY EXEMPTIONS

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

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1-E-1 | CREATION AND REVIEW OF EXEMPTIONS

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 All laws in effect on July 1, 1993, that limit access to meetings remain in force until they are repealed.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

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

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

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1-E-2 | EXEMPTIONS ARE NARROWLY CONSTRUED

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

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

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

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

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

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1-E-3 | EFFECT OF STATUTORY EXEMPTIONS

a. Notice Requirements

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

b. Attendance at Closed Meetings

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

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

c. Disclosure of Matters Discussed at Closed Meeting

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



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

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1-E-4 | SPECIAL ACT EXEMPTIONS

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

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APPENDIX



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