

Chapter XXI.

Public meetings.

A. Florida Constitution; Access to public records and meetings.

Article I, Section 24 of the Constitution states:

- (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.
- (b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.
- (c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. The legislature shall enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section, except that each house of the legislature, may adopt rules governing the enforcement of this section in relation to records of the legislative branch. Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject.
- (d) All laws that are in effect on July 1, 1993 that limit public access to records or

meetings shall remain in force, and such laws apply to records of the legislative and judicial branches, until they are repealed. Rules of court that are in effect on the date of adoption of this section that limit access to records shall remain in effect until they are repealed.

B. Section 286.011, Fla. Stat., Government in the Sunshine Law.

Section 286.011, Fla. Stat., in pertinent part provides:

- (1) All meetings of any board or commission of any state agency or authority 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.
- (2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection.

* * *

- (6) All 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 such a facility.

C. Intent of statute.

1. The intent of the Government in the Sunshine Law was “to cover any gathering of some of the members of a public board where those members discuss some matters on which foreseeable action may be taken by the board.” Hough v. Steinbridge, 278 So. 2d 288, 289 (Fla. 3d Dist. App. 1973).
2. The purpose of the Government in the Sunshine Law was “to prevent at non-public meetings the crystallization of secret decisions to a point just short of ceremonial acceptance.” Town of Palm Beach v. Gradison, 296 So. 2d 473, 477 (Fla. 1974).

D. What constitutes a meeting.

1. The Sunshine Law applies to any means of communication between two members of the same board.
 - a. Applies to any function where two members of the same board are present. See Fla. Atty. Gen. Op. 86-23 (1986) (election campaign function attended by two or more members of the city council was subject to Sunshine Law) and Rowe v. Pinellas Sports Authority, 461 So. 2d 72 (Fla. 1984) (since no two individuals who were members of the same governing body were present at meeting, no Sunshine Law violation occurred).
 - b. Must have two participants taking part. Deerfield Publishing, Inc. v. Robb, 530 So. 2d 510 (Fla. 4th Dist. App. 1988).
 - c. The entire decision-making process is subject to the Sunshine Law. Times Publishing Co. v. Williams, 222 So. 2d 470 (Fla. 2d Dist. App. 1969).
 - d. Applies to all assemblies or meetings, whether structured or casual, where there are discussions of matters which may foreseeably come before a board or commission are subject to the requirements of the Sunshine Laws. See Board of Public Instruction of Broward County v. Doran, 224 So. 2d 693 (Fla. 1969). See also Fla. Atty. Gen. Op. 00-08 (2000) (forum at which two or more members of the same district board were present and discussed matters that might foreseeably come before the board for official action, was subject to the Sunshine Law).
 - e. However, commissioners may attend a community development board meeting and express their views on a proposed ordinance, but the commissioners may not discuss or debate issues among themselves. Fla. Atty. Gen. Op. 98-79 (1998). See also Fla. Atty. Gen. Op. 00-68 (2000) (city commissioners could attend other city board meetings and comment on agenda items that may subsequently come before the commission for final action, but may not engage in discussions or debate on the issues amongst themselves).
2. Sunshine Law may apply even if there is no formal or informal meeting. In an informal opinion dated June 29, 1973, the Attorney General's Office reviewed a procedure utilized by a city commission whereby a memorandum was circulated by one commissioner upon which other members of the commission could write their concurrence or disapproval of the position, with the act becoming formally approved when all concurred. This procedure, even though none of the commissioners actually met formally or informally, was construed to be a violation of the Sunshine Laws.
3. Sunshine Law applies to certain communications that may not necessarily involve two

members of the same board.

a. Collective bargaining.

(1) In City of Fort Myers v. News-Press Publishing Co., 514 So. 2d 408 (Fla. 2d Dist. App. 1987), the court held that the provisions of Fla. Stat. § 286.011 were applicable to the entire collective bargaining procedure, even after the declaration of an impasse. An interesting aspect of this case is that the court appears to have found that the applicability of the Sunshine Laws to bargaining sessions was broad enough to encompass private discussions between the attorneys representing labor and management in their attempts to settle or resolve collective bargaining matters prior to and during the course of a special master proceeding.

(2) But, a statutory exemption does exist for meetings between the collective bargaining negotiator and the city/county board or commission (legislative body) wherein the subject is discussion of collective bargaining matters. Fla. Stat. § 447.605(1).

b. A party cannot act as a liaison between two members of same board or take an official poll. See Blackford v. School Bd. of Orange County, 375 So. 2d 578, 580 (Fla. 5th Dist. App. 1978) (six sessions of discussions, repetitive in content, in rapid-fire seriatim and of such obvious official portent, resulted in six de facto meetings by two or more members of the same board).

c. Sunshine Law applies if a single member has been delegated decision making authority to act on behalf of his or her board. See Fla. Atty. Gen. Op. 74-294 (1974); Fla. Atty. Gen. Op. 86-23 (1986); Fla. Atty. Gen. Op. 87-34 (1987); Rowe v. Pinellas Sports Authority, 461 So. 2d 72 (Fla. 1984).

E. Boards and committees subject to the public meetings law.

1. Governing bodies and decision-making committees of government agencies.

a. Must be a governmental agency. See McCoy Restaurants, Inc. v. City of Orlando, 465 So. 2d 546 (Fla. 5th Dist. App. 1987) and McCoy Restaurants, Inc. v. City of Orlando, 392 So. 2d 252 (Fla. 1980).

b. Applies to **public boards and commissions**, and to the members of such boards and commissions. Also applies to the members-elect of boards, commissions, and agencies. Hough vs. Stembridge, 278 So. 2d 288 (Fla. 3d Dist. App. 1973).

Include all legislative bodies and generally to other decision-making committees of local government entities. Includes boards or commissions created by law or by a public agency. Lyon v. Lake County, 765 So. 2d 785 (Fla. 5th Dist. App. 2000), rev. den. 790 So. 2d 1105 (Fla. 2001).

2. **Advisory boards or committees**, including committees of staff members, other than those which are mere fact-finders.
 - a. The Sunshine Law “equally binds all members of governmental bodies, be they advisory committee members or elected officials.” Monroe County v. Pigeon Key Historical Park, Inc., 647 So. 2d 857, 869 (Fla. 3d Dist. App. 1994).
 - b. However, when a committee has been established strictly in an advisory capacity, and conducts only fact-finding activities, such as information gathering and reporting, then those activities are not subject to the Sunshine Law.
 - (1) In Cape Publications v. City of Palm Bay, 473 So. 2d 222 (Fla. 5th Dist. App. 1985), the court held that staff did not constitute a board where it was merely asking questions of applicants for chief of police in front of the city manager.
 - (2) In Knox v. District School Board of Brevard County, 821 So. 2d 311 (Fla. 5th Dist. App. 2002), the court held that a team of staff members who interviewed and evaluated candidates for school principal, resulting in recommendations to the school superintendent, was not subject to the Sunshine Law, because all of the applications were forwarded to the superintendent, and it was the superintendent who then determined which applicants to interview and recommend to the school board. Although the team of staff members made recommendations, all of the applications for the school principal position were sent to the superintendent, who then decided which applicants to interview and nominate to the school board.
 - (3) In Molina v. The City of Miami, 837 So. 2d 462 (Fla. 3d Dist. App. 2002), the Third DCA found that investigations by a Discharge of Firearms Review Committee were not subject to the open meeting requirements of the Sunshine Law, because the committee was nothing more than a meeting of staff members who served in a fact-finding, advisory capacity to the chief of police.
 - c. In Krause v. Reno, 366 So. 2d 1244 (Fla. 3d Dist. App. 1979), the Florida Supreme Court held that once a city manager utilized a **citizens advisory group**

to assist him in screening applications and making recommendations for the position of chief of police, he created a “board” within contemplation of the Sunshine Law.

- d. **Citizens planning commission**, comprised of a group of private citizens who were appointed by the town council, was subject to the Sunshine Law because the committee acted on behalf of the council in an advisory capacity and participated in the formulation of the zoning plan. Town of Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974).
- e. **Ad hoc committee** appointed by a county board of rules and appeals (and comprising of board members, with the exception of one member) to review building plans of a parking garage for compliance with fire resistivity requirements was subject to the Sunshine Law, as the committee “made a ruling affecting the decision-making process and it was of significance.” Spillis Candela & Partners, Inc. v. Centrust Savings Bank, 535 So. 2d 694, 695 (Fla. 3d Dist. App. 1988). See also Leach-Wells v. City of Bradenton, 734 So. 2d 1168 (Fla. 2d Dist. App. 1999) (ad hoc selection committee task of short listing top three firms for city project was formal action that required a public meeting).
- f. **Community advisory committee**, consisting of appointees of the city council which would meet at least quarterly, receive citizen input, and make recommendations to the city council, must comply with the requirements of the Government in the Sunshine Law. However, a citizens meeting of street and block representatives and other representatives of the community, that served to express common concerns and develop issues which may then be presented for consideration to the Community Advisory Committee, would not be subject to the Sunshine Law. Fla. Atty. Gen. Op. 98-13 (1998).
- g. **Advisory committee** was subject to the Sunshine Law, because it was created by city ordinance to make recommendations to the city regarding vegetation and proposed development. However, two or more members of the committee could conduct survey visits without subjecting themselves to the notice requirements of the Sunshine Law, provided the members did not discuss the proposed development when conducting the survey. Fla. Atty. Gen. Op. 02-24 (2002).
- h. **Committee composed of staff and one outside person** was subject to the Sunshine Law, where the committee was created by a purchasing director to “weed through the various [contract] proposals, to determine which were acceptable and to rank them accordingly.” Silver Express Company v. Miami-Dade Community College, 691 So. 2d 1099 (Fla. 3d Dist. App. 1997).

- i. In the case of Wood v. Marston, 442 So. 2d 934 (Fla. 1983), the Florida Supreme Court found that the meetings of a search and screen committee, consisting of faculty members who had a decision-making function in the screening of applicants for a new dean, were improperly closed to the public.
 - j. **Hospital budget committee**, which consistently entirely of staff members, was subject to the Sunshine Law, because the governing authority of the hospital had delegated the responsibility of preparing the proposed budget to the committee. News-Press Publishing Company v. Carlson, 410 So. 2d 546 (Fla. 2d Dist. App. 1982).
 - k. In Evergreen the Tree Treasurers of Charlotte County, Inc. v. Charlotte County Board of County Commissioners, 810 So. 2d 526 (Fla. 2d Dist. App. 2002), the court held that a development review committee established by county ordinance, and consisting of county staff members who had the authority for the final approval of development projects, was subject to the Sunshine Law. The committee members no longer functioned as staff members but stood “in the shoes of such public officials insofar as application of Government in the Sunshine Law is concerned.”
 - l. Meetings of a **technical review committee** created by county ordinance were subject to the provisions of the Sunshine Law, but informal, informational meetings of the pre-technical review committee were not. Lyon v. Lake County, 765 So. 2d 785 (Fla. 5th Dist. App. 2000), rev. den. 790 So. 2d 1105 (Fla. 2001).
3. Certain private entities, if “standing in the shoes of the public agency.”
- a. The test to determine whether a private entity is subject to the Sunshine Law is whether the private entity is merely providing services to the public agency, or “is standing in the shoes of the public agency.” Fla. Atty. Gen. Op. 98-21 (1998). For example, if a county commission dissolves its cultural affairs council and designates a nonprofit organization to fulfill that role for the county, then the nonprofit organization would be subject to the Sunshine Law. Fla. Atty. Gen. Op. 98-49 (1998).
 - b. If a county ordinance provided that an **architectural review committee of a homeowners’ association** must review and approve applications for county building permits, then the architectural review committee was subject to the Sunshine Law, and must give public notice of its meetings and open the meetings to the public at large. In this scenario, the county=s function of reviewing and approving building permits had been delegated to the architectural committee. Fla. Atty. Gen. Op. 99-53 (1999).

- c. Astronauts Memorial Foundation, a nonprofit corporation, when performing duties funded under the General Appropriations Act, was deemed to be subject to the Sunshine Law. Fla. Atty. Gen. Op. 96-43 (1996).
- d. Activities of the Martin County Golf and Country Club, Inc., a not-for-profit corporation, which was specifically created to contract with a county for the operation of a public golf course on county property acquired by public funds, was subject to the Sunshine Law. Fla. Atty. Gen. Op. 02-53 (2002).
- e. In Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation, 729 So. 2d 373 (Fla. 1999), the Florida Supreme Court held that a private nonprofit organization that operated a hospital for the West Volusia Hospital Authority (an independent taxing district created by the Florida Legislature), pursuant to a lease and operating agreement with same, was subject to the open meeting requirements of the Sunshine Law. Citing Wood v. Marston, 442 So. 2d at 939, the court found that “the Authority’s delegation of the performance of its public purpose to West Volusia, Inc. is similar to the delegation of official acts by Marston that caused the search and screening committee in Wood to come within section 286.011, Florida Statutes.” 729 So. 2d at 383. But see Fla. Stat. § 395.3036 (2003) (providing that records and meetings of private corporations that lease public health care facilities are exempt from Public Records Act, Sunshine Law, and Article I, S. 24(a) and (b), Florida Constitution, so long as the public hospital district and private lessee are sufficiently distinct).
- f. However, a private corporation that performs services for a public agency and receives compensation for such services pursuant to a contract or otherwise, is not by virtue of that relationship alone necessarily subject to the Sunshine Law, unless the public agency’s governmental or legislative functions have been delegated to it. See McCoy Restaurants, Inc. v. City of Orlando, 392 So. 2d 252 (Fla. 1980) (airlines are not, by virtue of their lease with the aviation authority, public representatives subject to the Sunshine Law).

F. Notice.

- 1. Reasonable notice.
 - a. In Hough vs. Stenbridge, 278 So. 2d 288 (Fla. 3d Dist. App. 1973), the court held that the Sunshine Law did not prohibit a board or commission from taking action on a matter which had not been placed on an agenda, but it did prohibit a board or commission from holding a public meeting without reasonable notice to the public.

- b. In Law and Information Services, Inc. v. City of Riviera Beach, 670 So. 2d 1014 (Fla. 4th Dist. App. 1996), rev. den. 678 So. 2d 1287 (Fla. 1996), the court held that, while there is a need to notice a public meeting, there is no need to notice each item on the agenda.
- c. Similarly, in Yarbrough v. Young, 462 So. 2d 515 (Fla. 1st Dist. App. 1985), the court found that although reasonable notice of a meeting was mandatory under the Sunshine Law, a posted agenda was not always necessary. The court also determined that three days' notice of a meeting constituted reasonable notice.
- d. In Fla. Atty. Gen. Op. 03-53 (2003), the Attorney General's Office acknowledged that a city commission was not prohibited from following its procedural policy of allowing the addition of topics to the agenda of a regularly noticed meeting, and taking formal action on any matter added to said agenda. However, the Attorney General's Office strongly recommended that the city commission postpone formal action on a controversial matter coming before the commission at a meeting, where the public had not been given notice that such matter would be discussed.
- e. In Rhea v. City of Gainesville, 574 So. 2d 221 (Fla. 1st Dist. App. 1991), the court held that notice of approximately one hour and thirty minutes in advance of a special meeting was insufficient.
- f. Fla. Atty. Gen. Op. 90-56 (1990) discusses the potential need to re-advertise "continued" meetings.

2. Types of notice.

- a. Some meetings require public notice to be advertised in a local newspaper. See e.g., Fla. Stat. § 125.66 (public hearing for adoption of county ordinances); Fla. Stat. § 166.041 (public hearing for adoption of municipal ordinances); Fla. Stat. § 164.1053, *et seq.* (conflict assessment meetings); Fla. Stat. § 163.3225 (consideration of a development agreement); Fla. Stat. § 286.011(8) (closed attorney-client meetings to discuss pending litigation).
- b. The Attorney General's Office has suggested that, absent a statutory requirement for a specific type of notice, due or reasonable notice would vary depending on the facts of the situation and the board involved. See Fla. Atty. Gen. Op. 91-95 (1991); Fla. Atty. Gen. Op. 91-90 (1990); Fla. Atty. Gen. Op. 80-78 (1980). In Fla. Atty. Gen. Op. 90-56 (1990), the following guidelines were suggested:

- (1) The notice should contain the time and place of the meeting and an agenda (if no agenda is available, subject matter summations might be used).
 - (2) The notice should be prominently displayed in the appropriate agency's office.
 - (3) Emergency sessions should be afforded the most appropriate and effective reasonable notice under the circumstances, and special meetings should have at least twenty-four hours notice to the public.
 - (4) Press releases or telephone calls to the wire services and other media are highly effective. On matters of critical public concern, advertising in local newspaper of general circulation would be appropriate.
- c. As suggested in Fla. Atty. Gen. Op. 73-170 (1973), "[i]f 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."

G. Access.

1. Fla. Stat. § 286.26 provides for accessibility of public meetings to physically handicapped persons.
2. Fla. Stat. § 286.011(6) prohibits holding public 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.
 - a. In Rhea v. School Bd. of Alachua County, 636 So. 2d 1383 (Fla. 1st DCA 1994), the court held that a workshop held more than 100 miles from the board's headquarters violated the Sunshine Law. See also Bigelow v. Howze, 291 So. 2d 645 (Fla. 2d Dist. App. 1974).
 - b. In Fla. Atty. Gen. Op. 03-03 (2003), it was opined that a city could not enter into an interlocal agreement to conduct city commission meetings at a facility outside its boundaries, but that it may seek legislative enactment of a special law to authorize such action. Pending passage of a special law, however, the meetings should be held at a place accessible to the public and within the city's jurisdiction.
3. Internet meetings.

- a. In Fla. Atty. Gen. Op. 02-32 (2002), the Attorney General's Office determined that the use of an electronic bulletin board by board members of a water management district to discuss matters that may be addressed by the board violated the Sunshine Law, since the public was not permitted to participate in the online discussions.
- b. However, in Fla. Atty. Gen. Op. 02-66 (2002), it was opined that members of an airport authority could conduct informal discussions over the internet if proper notice was given and interactive access afforded to the public. The authority should provide public access via the internet, and designate locations where computers with internet access would be available.

H. Meeting minutes.

1. Definition of minutes. In Fla. Atty. Gen. Op. 82-47 (1982), minutes as used in Fla. Stat. § 286.011(2) are defined as "a brief summary or series of brief notes or memoranda" of a meeting.
2. Requirements.
 - a. Minutes are required. Pursuant to Fla. Stat. § 286.011(2) provides that the minutes of a meeting of board, commission or authority of any county, municipal corporation or political subdivision shall promptly be recorded and open to public inspection.
 - b. A vote to accept or revise and adopt the minutes. In Fla. Atty. Gen. Op. 02-51 (2002), it was determined that a city may not adopt a rule of procedure authorizing approval of minutes of prior public meetings, which does not require that the minutes be read or signed at a subsequent meeting if no changes to the minutes are made. Rather, a vote to accept or revise and adopt the minutes of the city commission meetings should be taken at a public meeting.

I. Videotaping of meetings.

1. In the case of Pinellas County School Board v. Suncam, Inc., 829 So. 2d 989 (Fla. 2d Dist. App. 2002), the court held that the board's refusal to allow the videotaping of a public meeting violated the Sunshine Law. Although the court noted that the Sunshine Law did not explicitly provide for the video recording of public meetings, refusing to allow recording violated the spirit, intent and purpose of the Sunshine Law.
2. In Fla. Atty. Gen. Op. 91-28 (1991), the Attorney General concluded that a municipality

may not prohibit a citizen from videotaping meetings of the city council through the use of nondisruptive video recording devices. The Attorney General noted that while a public board may adopt reasonable rules and policies to ensure the orderly conduct of public meetings, any rule that prohibited the use of silent or nondisruptive recording devices would appear to be unreasonable, arbitrary, and thus invalid.

J. Attendance at meetings; voting.

1. Quorum. The Attorney General's Office has concluded that, in the absence of a statute to the contrary, a quorum of the members of a public body must be physically present at a meeting in order to take action. See Fla. Atty. Gen. Op. 03-41 (2003); Fla. Atty. Gen. Op. 83-100 (1983); Fla. Atty. Gen. Op. 89-39 (1989).
 - a. In Fla. Atty. Gen. Op. 01-66 (2001), it was determined that if a quorum was necessary for the airport authority to take action, then the members constituting a quorum must be physically present at the meeting, although the meeting may be broadcast over the Internet.
 - b. Participation by telephone by an absent member in a public meeting should be permitted only in extraordinary circumstances and when a quorum of the board members is physically present at the meeting. Fla. Atty. Gen. Op. 03-41 (2003).
 - c. Physically-disabled members of a board may participate and vote on board matters by electronic means if they are unable to attend a public meeting, so long as a quorum of the members of the board is physically present at the meeting site. Fla. Atty. Gen. Op. 02-82 (2002).
2. Voting.
 - a. In consideration of the requirements of the Sunshine Law, members of local government boards, commissions, or agencies should also be aware that Fla. Stat. § 286.012 prohibits those members who are present at any meeting from abstaining from voting in regard to any of that agency's decisions, except where there is, or appears to be, a possible conflict of interest under the provisions of Fla. Stat. §§ 112.311, 112.313, or 112.3143. In such cases, the local government body member must not vote, and then must comply with the disclosure requirements of § 112.3143.
 - b. In George v. City of Cocoa, 78 F.3d 494 (11th Cir. 1996), the court held that a city councilman's possible run for a seat based on redistricting did not require him to abstain from voting. In fact, under Florida law, he was required to vote, as the

potential conflict was too speculative. See also Fla. Atty. Gen. Op. 87-17 (1987) (county commissioner may abstain from voting on a measure to avoid creating an appearance of impropriety only where such impropriety amounts to a conflict of interest).

- c. Advisory board members are also subject to the voting requirements of Fla. Stat. § 286.012, and a vote must be recorded for every member present unless a conflict exists. Fla. Atty. Gen. Op. 02-40 (2002).

K. Decorum.

1. Fla. Stat. § 871.01 provides:

Whoever willfully interrupts or disrupts a school or any assembly of people met for the worship of God or for any lawful purpose shall be guilty of a misdemeanor of the second degree ...

2. The Florida Supreme Court has held that Fla. Stat. § 871.01 is not violative of the First Amendment of the United States Constitution and is facially constitutional. See S.H.B. v. State, 355 So. 2d 1176 (Fla. 1977).
3. Fla. Stat. § 871.01 applies by its terms to “any assembly of people met for any lawful purpose” and has been applied to a town council meeting. See Weidner v. State, 380 So. 2d 1286 (Fla. 1980).
4. Some local government entities have adopted ordinances which regulate public participation at board and commission meetings and provide for the removal of disruptive persons. See Jones v. Heyman, 888 F.2d 1328 (11th Cir. 1989).

L. First Amendment considerations.

1. Public and nonpublic forums. Judicial review of governmental restrictions involving speech on public property depends on whether the speech takes place in a public or nonpublic forum.
 - a. Nonpublic forums. Regulations limiting speakers are upheld in a nonpublic forum if they are reasonable and not merely the result of disagreement with the speaker's point of view. Jones v. Heyman, 888 F.2d 1328, 1331 (11th Cir. 1989).
 - b. Traditional public forums. In a traditional public forum, such as a park, street or sidewalk, a government’s power to restrict expressive activity is limited:

For the State to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.... The State may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.

Jones v. Heyman, 888 F.2d 1328, 1331 (11th Cir. 1989), quoting Airport Comm'rs of Los Angeles v. Jews for Jesus, 482 U.S. 569, 573 (1987).

- c. Designated or limited public forums.
 - (1) A designated or limited public forum is created when the government intentionally and generally opens a nontraditional forum for expressive use by a limited class of speakers or for discussion of certain subjects for a certain time period. Arkansas Educ. Television Comm'n v. Forbes, 523 U.S. 666, 677 (1998); Jones v. Heyman, 888 F.2d 1328, 1331 (11th Cir. 1989). See also Rowe v. City of Cocoa, Florida, 2003 WL 22102150 (M.D. Fla. 2003).
 - (2) When a governmental board or commission opens a meeting to the public and permits public discourse on agenda items, the meeting constitutes a designated public forum. Jones v. Heyman, 888 F.2d 1328, 1331 (11th Cir. 1989).
 - (3) Other examples of public forums created by governmental designation. Widmar v. Vincent, 454 U.S. 263 (1981) (university meeting facilities); Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546 (1975) (municipal theater); City of Madison Joint School Dist. v. Wisconsin Employment Relations Comm'n, 429 U.S. 167 (1976) (school board meeting).
 - (4) Once a governmental board or commission creates a designated public forum, the board or commission becomes bound by the same standards that apply in the case of a traditional public forum. Jones v. Heyman, 888 F.2d 1328, 1331 (11th Cir. 1989).
2. Content-neutral time, place and manner restrictions are permissible if they are narrowly drawn to achieve a significant governmental interest and if they allow communication

through other channels. Jones v. Heyman, 888 F.2d 1328, 1331 (11th Cir. 1989).

3. Content neutral.
 - a. The government's purpose in limiting speech in a public forum constitutes the "controlling consideration" in determining content neutrality. Ward v. Rock Against Racism, 491 U.S. 781 (1989).
 - b. Even if a limitation on speech incidentally affects only some speakers, "[a] regulation that serves purposes unrelated to the content of the expression is deemed neutral... Government regulation of expressive activity is content-neutral as long as it is 'justified without reference to the content of the regulated speech.'" Ward v. Rock Against Racism, 491 U.S. 781 (1989), quoting Clark v. Community for Creative Non-Violence, 468 U.S. 288, 293 (1984). See also Jones v. Heyman, 888 F.2d 1328, 1332 (11th Cir. 1989).
4. Time, place, and manner restrictions. A valid time, place, and manner regulation must be narrowly tailored to serve a significant governmental interest. Jones v. Heyman, 888 F.2d 1328, 1332 (11th Cir. 1989).
 - a. The courts have recognized the significance of the government's interest in conducting orderly and efficient meetings of public bodies. See City of Madison, Joint School Dist. v. Wisconsin Employment Relations Comm'n, 429 U.S. 167 (1976); Jones v. Heyman, 888 F. 2d 1328, 1332 (11th Cir. 1989).
 - b. In the case of Jones v. Heyman, 888 F. 2d 1328, 1333 (11th Cir. 1989), the court recognized the mayor's important interest in controlling the agenda, confining the discussion to the topic at hand, and preventing the disruption of the commission meeting. The court stated that "[t]o hold otherwise -- to deny the presiding officer the authority to regulate irrelevant debate and disruptive behavior at a public meeting -- would cause such meetings to drag on interminably, and deny others the opportunity to voice their opinions." Id.
 - c. Setting time limits on the amount of time the public will be permitted to speak at a public meeting, or setting a time limit on a particular speaker, has been found to serve a significant governmental interest in conserving time and ensuring that others have an opportunity to speak. See Wright v. Anthony, 733 F.2d 575 (8th Cir. 1984) (five-minute time limit upheld).
5. Narrowly tailored. Time, place, and manner restrictions must be "narrowly tailored" to achieve the government's interest. The regulation need not be the least intrusive or least

restrictive, but rather is narrowly tailored if the regulation promotes a substantial government interest that would be achieved less effectively absent the regulation. See Ward v. Rock Against Racism, 491 U.S. 781 (1990).

6. Alternative channels of communication. For example, providing for further public discussion of agenda or non-agenda items at the end of every meeting would meet this requirement. See Jones v. Heyman, 888 F.2d 1328, 1334 (11th Cir. 1989). Another alternative may be to allow a speaker to include written materials as part of the record.

M. Exemptions from the Public Meeting Law.

1. Exemptions must meet exacting constitutional standard.
 - a. Article I, Section 24(c), Florida Constitution, provides that an exemption to Article I, Section 24(b), Florida Constitution, “shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the statutory purposes of the law.”
 - b. In the case of Halifax Hosp. Med. Ctr. v. News-Journal Corp., 724 So. 2d 567 (Fla. 1999), Fla. Stat. § 395.3035(4) (1995), which provided that portions of board meetings of governing bodies of public hospitals at which written strategic plans were discussed were exempt from the open meetings law, was held unconstitutional under Article I, Sections 24(b) and (c), Florida Constitution. While the statute stated the public necessity for the exemption, an exemption for all portions of the strategic plan was deemed to be facially overbroad, as the statute did not include a definition of “strategic plan” and the exemption was not limited to only critical confidential portions of the plan. The subject statute was subsequently amended by the Legislature to include a definition of “strategic plan”.
2. Meetings of corporations that lease public hospitals or other public health care facilities. Pursuant to Fla. Stat. § 395.3036, meetings of the governing board of a private corporation that leases a public hospital or other public health care facilities are exempt when the public lessor and private lessee meet certain criteria.
3. Certain discussions related to investigations of fraudulent insurance claims and crimes regarding fires are exempt from the provisions of Fla. Stat. § 286.011. See Fla. Stat. § 633.175(5). See also Kirscher v. D'Amato, 674 So. 2d 909 (Fla. 4th Dist. App. 1996).
4. Certain discussions regarding collective bargaining. Fla. Stat. § 447.605(1) exempts all discussions between the chief executive officer of the public employer or representative, and the legislative body or the public employer.

5. Risk management meetings. Pursuant to Fla. Stat. § 768.28(15)(c), portions of meetings and proceedings conducted pursuant to a risk management program administered by the state, its agencies, or subdivisions, are exempt from the Sunshine Law. This specifically applies to matters which relate solely to the evaluation of claims, or offers of compromise of claims, filed with the risk management program.
6. Meetings involving a security system plan. Portions of any public meeting which would reveal a security system plan are exempt from the provisions of the Sunshine Law. See Fla. Stat. § 281.301(1).
7. Attorney-client meetings.
 - a. In Neu v. Miami Herald Publishing Co., 462 So. 2d 821 (Fla. 1985), the court held no common law attorney-client privilege from public meetings law existed, and that the provisions of Fla. Stat. § 286.011, were applicable to meetings of a city attorney and a city commission, even though the subject matter solely was the discussion of settlement of pending litigation. In this case it was argued that a tape recording of the session could be made and the tape publicly disclosed after the litigation had been concluded or settled. The Court rejected this argument, stating that such meetings need to be either fully open or fully closed, and that there could be no middle ground.
 - b. However, in 1993, the Florida Legislature adopted a provision which amended § 286.011 by adding subsection (8), which specifically provides that government boards, commissions, and agencies are authorized to meet privately with their attorney to discuss pending litigation. This statute provides that to have a private attorney-client meeting the following conditions have to be met: (a) the attorney shall advise said entity at a public meeting that advice concerning ongoing litigation is desired; (b) the subject matter of the meeting must be confined to settlement negotiations or strategy; (c) the meeting must be recorded by a certified court reporter, who must fully transcribe the notes and file the transcript with the entity's clerk within a reasonable time after the meeting; (d) the entity shall give reasonable public notice of the date and time of the attorney-client meeting and the names of persons who will be attending; and (e) when the litigation has been concluded the transcript will then become a public record.
 - c. Nonetheless, the courts have decided, based on the history of the Sunshine Law, that the statutory exemption will be strictly construed. In City of Dunnellon v. Aran, 662 So. 2d 1026 (Fla. 5th Dist. App. 1995), the City failed to state the actual names of the lawyers who were attending at the onset of the meeting. The

City had felt that indicating that their attorneys would be in attendance, without stating the actual names of the attorneys, was sufficient. However, the Fifth DCA rejected this position and held that a Sunshine Law violation had still occurred.

- d. In School Bd. of Duval County v. Florida Publishing Co., 670 So. 2d 99 (Fla. 1st Dist. App. 1996), the court held that only those people identified in the statute may attend the closed attorney-client meeting. Therefore, while attorneys (including special counsel) could attend a closed meeting regarding litigation, staff and consultants could not. See also Zorc v. City of Vero Beach, 722 So. 2d 891 (Fla. 4th Dist. App. 1998), rev. den. 735 So. 2d 1284 (Fla. 1999); Fla. Atty. Gen. Op. 95-06 (1995).
- e. In Fla. Atty. Gen. Op. 01-10 (2001), the Attorney General stated that the clerk of court was not entitled to attend attorney-client meetings of the board of county commissioners. See also Zorc v. City of Vero Beach, 722 So. 2d 891 (Fla. 4th Dist. App. 1998), rev. den. 735 So. 2d 1284 (Fla. 1999) (attendance of city clerk and deputy city clerk at closed attorney-client meetings was improper and violated Sunshine Law).
- f. The Attorney General opined in Fla. Atty. Gen. Op. 99-37 (1999) that the closed-door meeting exemption of Fla. Stat. § 286.011(8) should be narrowly construed and used only for situations where the attorney for the public entity seeks advice on settlement negotiations and strategy relating to litigation expenditures. The meetings should not be used to direct a final course of action in a pending lawsuit. This opinion is largely based on Zorc v. City of Vero Beach, 722 So. 2d 891 (Fla. 4th Dist. App. 1998), rev. den. 735 So. 2d 1284 (Fla. 1999).
- g. In Bruckner v. City of Dania Beach, 823 So. 2d 167 (Fla. 4th Dist. App. 2002), rev. den. 842 So. 2d 843 (Fla. 2003), the Fourth DCA found that the City's meeting with attorneys behind closed doors to discuss settlement negotiations and strategy in connection with a pending federal lawsuit regarding a City resolution did not violate the Sunshine Law. Even if there was a violation, a subsequent, duly noticed public meeting in which the City attorney discussed the option of modifying the resolution (an option discussed during the closed meeting), cured any Sunshine Law violations.
- h. In Brown v. City of Lauderhill, 654 So. 2d 302 (Fla. 4th Dist. App. 1995), the court held that while the mayor was the named party in suit, the City was the real party in interest; therefore, a closed attorney-client meeting was authorized. Although the City was not a nominal party in the attorney's fee litigation at the time of the meeting with its counsel, the court found that the City's interest dictated that

it would soon be involved in any litigation necessary to protect or enforce its interest in the fee.

N. Sanctions for violations.

1. Criminal. Fla. Stat. § 286.011(3)(b) provides that any member of a public body subject to § 286.011 who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree.
 - a. Criminal prosecution for a violation thus requires proof of knowledge and intent. See Board of Public Instruction of Broward County v. Doran, 224 So. 2d 693, 699 (Fla. 1969) (construing the statute to impliedly require a charge and proof of scienter).
 - b. With regard to reimbursement of attorney's fees incurred in the successful defense of charges of a violation of the statute, see City of Fort Walton Beach v. Grant, 544 So. 2d 230 (Fla. 1st Dist. App. 1989), approved in part, quashed in part by Thornber v. City of Fort Walton Beach, 568 So. 2d 914 (Fla. 1990).
2. Civil. Fla. Stat. § 286.011(3)(a) provides that any public officer who violates any provision of this section is guilty of a non-criminal infraction, punishable by fine not exceeding \$500.
3. Attorney's fees.
 - a. Fla. Stat. § 286.011(4) also provides that whenever an action has been filed against a board or commission or its members, alleging a violation of the Sunshine Law, the court may assess reasonable attorney's fees against the agency if the defendant(s) are found to have acted in violation of this section; however, the court may also assess a reasonable attorney's fee against the individual filing such an action if the court finds the action was filed in bad faith or was frivolous.
 - b. Fla. Stat. § 286.011(5) provides for reasonable attorney's fees for appeals of such decisions of the lower court. However, even though the wording of the statute states that the court shall assess a reasonable attorney's fee, the fee is not automatically awarded. In School Bd. of Alachua County v. Rhea, 661 So. 2d 331 (Fla. 1st Dist. App. 1995), rev. den. 670 So. 2d 939, the court held that a party does not automatically receive appellate attorney's fees in a Sunshine Law case, but must make a timely motion.

O. Validity of actions taken in violation of the Sunshine Law.

1. Fla. Stat. § 286.01(1) provides that no resolution, rule or formal action shall be considered binding except as taken or made at an open meeting. The general public has standing to challenge alleged noncompliance. McCoy Restaurants, Inc. v. City of Orlando, 465 So. 2d 546 (Fla. 5th Dist. App. 1985).
2. In Town of Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974), a zoning ordinance was declared invalid by the Florida Supreme Court because of Sunshine Law violations of a citizens planning committee. The citizens planning committee had held meetings outside of the “sunshine” with a professional planner, and then subsequently made recommendations to the town planning commission which held hearings and made subsequent recommendations to the town council. The town council then held public hearings and adopted an ordinance based upon these recommendations. The court invalidated the ordinance despite the subsequent ratifications and public hearings, holding that an action taken in violation of the Sunshine Law was void ab initio.
4. In the case of Port Everglades Authority v. International Longshoremen’s Association, 652 So. 2d 1169 (Fla. 4th Dist. App. 1995), the Fourth DCA held that a violation of the Sunshine Law occurred when a Selection and Negotiation Committee of the Port Authority excluded bidders from hearing the presentations of the other competing bidders. The Committee ranked the bidders, and then the very next day the Port Authority approved the Committee’s rankings, resulting in the award of a contract. However, the Fourth DCA held that the Sunshine Law violation invalidated the contract award.
5. In Broward County v. Conner, 660 So. 2d 288 (Fla. 4th Dist. App. 1995), rev. den. 669 So. 2d 250 (Fla. 1996), the county’s attorneys were given authority to negotiate the purchase of property near the airport, but the commissioners did not ratify the agreement at a public hearing. The plaintiffs attempted to sue for specific performance and violation of the statute of frauds. The fourth district court held that the agreement was not enforceable for various reasons. First, the agreement violated the provision in the statute of frauds which requires contracts for the sale of land to be signed by the party charged, and part performance does not remove an oral contract for sale of land from the statute without payment, possession and improvement, none of which were met here. Secondly, the enforcement would have violated the Sunshine Law because the county could not have entered into the contract without any formal action taken at a meeting. Therefore, the correspondence between the county’s attorneys and the other party could not bind the county to specific performance.
6. In Board of County Comm’rs of Sarasota County, v. Webber, 658 So. 2d 1069 (Fla. 2d Dist. App. 1995), the petitioner was seeking a variance to a zoning restriction. At the hearing, the vote at first was 3-2 in favor of granting the variance. However, during a brief recess, one of the commissioners who had voted in favor of the variance announced that

he had a “lapse of consciousness” and had thought that he had been voting to deny the variance and not to approve it. He then made a motion to reopen the hearing which the board unanimously agreed to do and after receiving further presentations, the board then voted 3-2 to deny the variance.

In this case, the respondent’s attorney objected to the procedures and questioned whether the board members had privately discussed substantive issues involving his client’s request.

The member replied that all he did was ask another member to clarify procedurally what had transpired in terms of whose motion was on the floor to be voted on. He further stated that after he determined he had misunderstood, he immediately notified the applicant’s attorney of this and advised of his intent to reopen the hearing, and the applicant’s attorney accepted such representations.

The second DCA found that all deliberative bodies have the right to reconsider their proceedings during their session as often as they think proper and the person making the motion to reconsider must have voted in the majority (as was the case here). The court felt that given the short length of time between the two votes that it was unreasonable to conclude that the change of mind was detrimental to any rights acquired by virtue of the first vote. The court concluded that the board afforded the respondent all the requirements of due process before it reached a final decision, and the board gave the applicant ample opportunity to voice his objection when the hearing was reopened. As to the discussion between the board members during the recess, the court concluded from the record that such discussions did not violate the Sunshine Law as the discussion was on the procedural circumstances and not on the substantive merits, a fact which applicant’s attorney conceded, and there was no evidence that the board conspired in secret to reconsider. Further, the court found that even if there was a “technical” violation of the Sunshine Law, such a violation did not invalidate the board’s decision.

P. Cures.

1. An initial violation of the Sunshine Law may be cured by independent final action taken in the “sunshine.” In Tolar v. School Board of Liberty County, 398 So. 2d 427 (Fla. 1981), the Supreme Court found that there was no evidence to show that the actions were a mere ceremonial ratification or acceptance of a prior secret decision. Pursuant to the Tolar case, governmental actions will not be voided whenever governmental bodies have met in secret, when sufficiently corrective final action has been taken. 398 So. 2d at 428-429.
2. Even if there had been a prior secret meeting of the city council, such a technical violation of the “Sunshine Law” would not invalidate council’s actions at a duly noticed and public meeting, absent evidence that the formal actions taken at the meeting were a perfunctory ratification of secret decisions. Yarbrough v. Young, 462 So. 2d 515 (Fla. 1st Dist. App.

1987). See also Zorc v. City of Vero Beach, 722 So. 2d 891 (Fla. 4th Dist. App. 1998), rev. den. 735 So. 2d 1284 (Fla. 1999) (only a full, open hearing will cure a defect arising from a Sunshine Law violation, and such violation will not be cured by a perfunctory ratification of the action taken outside of the sunshine).

3. The violation can also be cured by full reexamination and re-discussion in an open public meeting. Blackford v. School Board of Orange County, 375 So. 2d 578 (Fla. 5th Dist. App. 1979).
4. In the case of Monroe County v. Pigeon Key Historical Park, Inc., 647 So. 2d 857 (Fla. 3d Dist. App. 1995), the Third DCA reversed the trial court's decision, and held that Sunshine Law violations of an Advisory Committee had been cured by subsequent governmental actions. In this case, the County Commission directed an Advisory Committee to negotiate a lease agreement. The Advisory Committee held two meetings without proper notice, followed by a third and final meeting which did have proper public notice. Thereafter, the County Commission held two public hearings on the lease agreement, resulting in substantial revisions to the initial lease agreement. In addition, at the second public hearing, the minutes of the unnoticed Advisory Committee meetings were read into the record. The Third DCA noted, among other things, that the County Commission did not ceremonially accept or perfunctorily ratify the Advisory Committee recommendations, that the minutes of the unnoticed Committee meetings were read into the record by the County Commission, and that the lease approved by the County Commission was markedly different from the lease recommended by the Advisory Committee. Thus, the subsequent governmental actions by the County Commission cured the Sunshine Law violations.
5. In the case of Bruckner v. City of Dania Beach, 823 So. 2d 167 (Fla. 4th Dist. App. 2002), rev. den. 842 So. 2d 843 (Fla. 2003), the Fourth DCA found that there was no violation of the Sunshine Law when the City and its attorneys met to discuss lawsuit settlement options and strategy pursuant to Fla. Stat. § 286.011(8)(b). The subject of the lawsuit was a City resolution. At the closed attorney-client meeting the City weighed three options, and favored the option of pursuing a modification of the subject resolution at a public meeting. At that time, the City Commission did not vote or take official action on the resolution, nor did it formally decide to settle the lawsuit. Three months later, at a public, duly advertised meeting, the City adopted a revised resolution. The Fourth DCA noted that even if there had been a violation of the Sunshine Law, the violation was cured by the independent, final action by the City Commission in adopting the revised resolution in the Sunshine. Id. at 171.

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