

CareerSource Brevard (CSB)
Board of Directors
Sunshine Law Training
June 12, 2018

MINUTES

Members in Attendance: Daryl Bishop (Acting Chair), Joe Angelastro, Colleen Browne, Susan Glasgow (via teleconference), Nancy Heller, Traci Klinkbeil, Mike Menyhart, Wayne Olson.

Members Absent: Frank Abbate, Shawn Beal, Desmond Blackburn, William Chivers, Dale Coxwell, Robert Jordan, Paula Just, Jennifer Kenny, Travis Mack, Linda Miedema, Terry Schrupf, Patricia Stratton, Lynda Weatherman.

Staff Present: Judy Blanchard, Don Lusk, Marci Murphy, Lyn Sevin.

Presentation: Shannon Wilson, Deputy County Attorney with Brevard County Board of County Commissioner Attorney's Office presented an overview of the Sunshine Law as it pertains to CSB board members as follows:

Florida's Government in the Sunshine
Sunshine Law

I. Sunshine Law - the broad concept (Generally F.S. 286.011)

- A. Provides all people a right to be present at governmental meetings at state and local level.
 - 1. Applies to elected and appointed boards - any board or commission of the state, county, municipalities, and their advisory boards.
 - 2. Any meeting of two or more members of same board to discuss some matter which will foreseeably come before that board for action.
 - 3. Can apply to advisory committees appointed by a single public official.
e.g., advisory board appointed by City Manager to screen applications and make recommendation on police chief.
 - 4. Collective bargaining negotiations - between public employer and bargaining agent (not to meetings of staff to prepare for collective bargaining negotiations with a bargaining unit/agent).
 - 5. Members-elect.

II. Meeting Requirements

- A. Meetings open to public.
- B. Reasonable notice of meeting - not specifically defined.
- C. Minutes kept - does not need to be tape recorded (however, this is recommended); available to public
- D. ADA - Reasonable accommodation notice.
- E. 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.
- F. Votes cannot be secret
- G. Public comment (other than at workshops) - in 2013 the legislature enacted Fla. Stat 286.0114 providing what many boards subject to the Sunshine allow (some did not); the public shall be given a reasonable opportunity to be heard on a proposition before a board; that opportunity does not have to occur at the same meeting at which the board takes official action on the proposition as long as 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.

Circuit Court has jurisdiction to enforce the opportunity to be heard by issuing injunction upon citizen of the state filing for such relief; attorney's fees can be awarded.

Policies/procedures for public comment:

- 1. The amount of time an individual has to address the board or commission;

2. 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. 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.
- H. Exception to public comment - 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; ministerial act, including, but not limited to, approval of minutes and ceremonial proclamations; meeting that is exempt from s. 286.011; or meeting during which the board or commission is acting in a quasi-judicial capacity.

III. Voting - Fla. Stat. 286.021

"A member of a commission 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 in regard to any such decision, ruling, or act; 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, 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 only conflict or possible 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."

IV. Exception to Sunshine law

- A. Does not apply to meetings of staff.
- B. Does not apply to meeting of staff and a single public official (however, cannot use staff as conduit).
- C. Note: When staff member is appointed to a committee or board which is delegated authority to make recommendations to Board, the staff member is no longer working just as staff; therefore, meeting between staff board member and board member is covered by Sunshine.
- D. Committee established for sole purpose of fact finding - not subject to Sunshine.
- E. Candidate forums - as long as only discuss philosophies, etc. and not issues likely to come before them.
- F. Does not apply to meeting of a public official from one agency and public official from another agency (e.g., member of a City Council meets with member of County Commission): caveat unless they are members of another board subject to Sunshine.

V. Written correspondence

- A. Use of written report/memo/email by one board/committee member to advise other members of a matter to be discussed at public meeting is acceptable - presuming there is no further interaction related to the report among members.
 1. If report is circulated among members for comments, and the comments are being passed on to other members, this constitutes interaction and violates Sunshine.

VI. Telephone/email/text conversations

- A. Cannot use phone/email /texting contact to circumvent meeting requirement.
- B. Re: Meetings: As long as a quorum of a board is physically present at the meeting location, electronic media can be used to allow a physically absent member to attend; however, the absent member must be able to hear all other members and the public and vice versa.

VII. Delegation of Authority to Individual

- A. No exception if delegated.

B. Examples:

1. Short listing in evaluating proposals - can't send in individual written evaluation for one individual to tally and rank; short listing is formal action required at public meeting.
2. Single member of board delegated authority to act on behalf of board in negotiating lease – the meeting between the single board member and the other party must be in Sunshine.

C. Note: If single member only authorized to gather information or determine facts, Sunshine not applicable.

VIII. Miscellaneous

- A. Staff cannot be used as conduit - cannot poll board members
- B. Applies to any gathering - informal discussions, workshops.
- C. No exemption from Sunshine to discuss confidential material; any exception from Sunshine must be expressly provided by statute.

IX. Express exceptions -types of meetings not subject to Sunshine

- A. F.S. 286.011(8) - board or commission, chief administrative or executive officer of the governmental entity may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency.
 1. Attorney shall advise entity at public meeting he wants advice on litigation;
 2. Subject matter at meeting shall be limited to settlement negotiations or strategy sessions related to litigation expenditures;
 3. Entire session recorded by court reporter (takes time begun and ended, persons present; fully transcribed and filed with entity's clerk);
 4. Entity gives reasonable public notice of time and date of meeting, names of persons attending;
 5. Transcript becomes public record at conclusion of litigation;
 6. Such meeting not need to finalize action; per statute, settlements of \$5,000 or above.
- B. That portion of a meeting that would discuss a security system or plan
- C. Any portion of a meeting of staff/individuals, established by an agency for the purpose of conducting negotiations as part of a competitive solicitation, at which negotiation strategies are discussed; any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation (bids, proposals, replies), at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation. F.S. 286.0113.

Note -a complete recording of these exempt portions of the meeting must be kept; the recording and records presented during such exempt meetings are only exempt until the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.
- D. F.S. 447.605 -All discussions between the chief executive officer of the public employer or his/her representative, and the legislative body/public employer relative to collective bargaining shall be closed and exempt.

X. Violations of Sunshine

- A. A board member who knowingly violates the Sunshine law by attending a meeting subject to the Sunshine law, but is not held in accordance with the meetings requirements may be prosecuted for a misdemeanor of the second degree -punishable by up to 60 days in jail and a \$500 fine.
- B. Attorney's fees may be assessed against a party found in violation if a civil action is brought to enforce the law.
- C. If action is brought by a private individual to enforce the law and the action is found to be frivolous, the court may assess reasonable attorney's fees against the private individual.

References: Government in the Sunshine Manual (published annually) -covers Sunshine and Public Records laws <http://www.myfloridalegal.com/sun.nsf/sumannual>

Attorney General's Office – FAQ - http://myfloridalegal.com/pages.nsf/Main/32_1B47083D80C4CD8525791B006A54E3

The following questions were addressed:

The CSB Board staff will ensure compliance with the Sunshine Law as it pertains to CSB meetings.

Two or more members cannot discuss board matters but a board member may send an email to another board member as long as there is no discussion on a topic to be addressed at a board meeting. Members can also send an email to another member requesting items to be added to an agenda but it is recommended that the request be sent directly to staff. Staff and board members cannot act as a conduit for information that would impact a discussion or vote coming before the board of directors.

If a person is on more than one board, and each board is discussing the same topic, then all of the meetings must follow the public notice requirements.

All meetings must be open to the public and public comments must be allowed at each meeting but the timing can be regulated. It was suggested that this be added to CSB's Bylaws. It was also noted that a citizen must be a Florida resident in order to file a legal complaint against public comment restrictions.

Telephone voting was discussed and it was determined that CSB is allowed to use those members calling in via teleconference to meet the quorum.

A member may not abstain from voting unless there is a conflict of interest.

Sunshine Law applies to Committees created to select high level CSB staff.

It was suggested that the organization purchase a copy of the updated Sunshine Manual each year.

There being no further business, the meeting was adjourned at 9:55am.

Submitted by,

Reviewed by,

(signature on file)
Lyn Sevin

6/14/2018
Date

(signature on file)
Daryl Bishop

6/14/2018
Date