

1. Sunshine Law (§ 286.011, Fla. Stat., and Art. I, § 24, Fla. Const.)

- Florida’s Government in the Sunshine Law, “provides a right of access to governmental proceedings of public boards or commissions at both the state and local levels. The law is equally applicable to elected and appointed board members, and applies to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action.”¹
- There are **three** (3) basic requirements: **(1)** meetings of public boards or commissions must be open to the public; **(2)** reasonable notice or such meetings must be given; and **(3)** minutes of the meetings must be taken and promptly recorded. *****PLUS*****
- Members of the public shall be given a reasonable opportunity to be heard on a proposition before the board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action, as long as the opportunity to be heard occurs at a meeting during the decision-making process and is within a reasonable proximity before the meeting at which the board or commission takes the official action.
- The opportunity to be heard does not apply to: (i) an official act taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance would cause unreasonable delay; (ii) ministerial acts; (iii) meetings exempt from the Sunshine Law; or (iv) where the board or commission acts in a quasi-judicial capacity (i.e., arbitrator, tribunal, zoning appeals).
- The law applies to “any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision”, **including**:
 - (i) Publicly created advisory boards or committees that have been delegated “decision making authority” as opposed to mere “information gathering or fact-finding authority”.
 - (ii) Ex officio board members, regardless of voting or non-voting capacity.²
 - (iii) **BUT NOT** (a) staff committees or staff meetings, (b) candidates or members-elect, (c) federal agencies operating within the State of Florida, and (d) those exceptions established by law or Florida Constitution.
- Private telephone conversations, or private discussions of board business or matters which foreseeably will come before that board for action via written correspondence, **emails, texts**, or other electronic platforms (i.e., Facebook, LinkedIn, WhatsApp, GroupMe, Snapchat, Instagram), between board members violate the Sunshine Law.³
- Any person who is a member of a board or commission, who knowingly violates the Sunshine Law, whether the violation occurs within or outside the State of Florida, is guilty of a second degree misdemeanor, punishable by sixty (60) days in jail and/or \$500 fine.

¹ Government-In-The-Sunshine-Manual, Part I, A. p.1 (2021).

² Fla. Attorney General, AGO 05-18

³ *Linares v. Dist. Sch. Bd. of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. Jan. 10, 2018). *See also* AGO 89-39 (members of a public board may not use computers to conduct private discussions among themselves about board business).

2. Virtual Meetings During Covid and Beyond....

- Executive Order No. 20-69 (Emergency Management - COVID-19 - Local Government Public Meetings enacted March 20, 2020), among other thing, “suspend[ed] any Florida Statute that require[d] a quorum be present in person or require[d] a local government body to meet in a specific public place.”
- This allowed local governmental bodies, agencies, and authorities to meet virtually, via communications media technology (i.e., Zoom, Microsoft Teams, Webex Meetings), as long as such platform conformed with Section 120.54(5)(b)(2), Fla. Stat., which delineates parameters for the uniform rules of procedure to be used to conduct public meetings, hearings and workshops. For example, if the meeting were to be conducted electronically, the notice of the meeting had to state such as well as include how the public could attend and participate.
- Executive Order No. 20-69, expired on November 1, 2020.
- “in the absence of a statute to the contrary, the Attorney General’s office historically has taken a conservative approach, out of concern for the validity of actions taken by the public body, concluding that any statutory quorum requirement to conduct public business requires the quorum of members to be physically present and that members present by electronic means could not count toward establishing the quorum. A long line of opinions by my predecessors contain conclusions to that effect.”⁴
- *Therefore*, local boards may not conduct meetings entirely through the use of communications media technology; only state agencies which comply with certain uniform rules of procedure can do such. A quorum of the board members must be physically present at the meeting. Given such a quorum of physically present board members, “the participation of an absent member by telephone conference or other interactive electronic technology [is] permissible when such absence is due to extraordinary circumstances such as illness.”⁵
- Recent example – School Board of Broward County sent an inquiry to the Florida Attorney General on November 4, 2020 based upon the expiration of Executive Order No. 20-69 asking “[m]ay a district school board’s advisory committee meet remotely through communications media technology and without the requirement of an in-person quorum at a physical meeting location?”
- As stated by the Florida Attorney General in its informal opinion, “unless and until legislatively or judicially determined otherwise, I conclude that where, as here, an executive order previously suspending a statutory in-person requirement for constituting a quorum has expired, the statutory requirement of an in-person quorum at a physical location that applies to the School Board in conducting its business also applies to a School Board advisory committee in carrying out its delegated duties.”
- Using plain English – absent another Executive Order, or subsequent legislative enactment or judicial decision, **100% virtual meetings are prohibited**, but such tools could be used for additional member participation as long as physical quorum and meeting location requirements have been met.

⁴ Fla. Attorney General, AGO 2020-03.

⁵ Fla. Attorney General, AGO 2003-41.