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Sunshine Laws

All 50 states, the District of Columbia, and the federal government have open meeting laws. These laws often are referred to as sunshine laws—an allusion to shedding light on government deliberations. Sunshine laws regulate the conduct of government business by state and local officials and employees. Because the laws vary greatly, it is important that planning commissioners know the requirements of their state’s legislation. Those who violate the law may be held legally liable and risk losing their positions, fines, and imprisonment.

In general, the laws require that all official actions be taken and all deliberations concerning official business be conducted in public session. They may prohibit some actions and impose reporting responsibilities for others. While sunshine laws require boards and commissions to open their meetings to the public, they do not necessarily mandate that the public be allowed to address officials during the meetings.

The first open meeting law was passed in Florida in 1967. While all states now have sunshine laws, their provisions vary: 41 states require advance notice of meetings; 37 states require that minutes are taken at every meeting, including executive sessions; and, in 31 states, actions or decisions are legally binding only if

they are decided upon during an open meeting.

Laws apply to a range of state and local commissions, boards, and councils. Some laws apply exclusively to public bodies with the authority to make decisions or expend funds, while others affect any entity that performs a public service and is supported by public funds. In many cases, the laws extend to subcommittees of public entities.

Generally, sunshine laws guarantee public access to meetings only when a quorum of a public body meets to discuss public business. Some states, however, invoke their open meeting laws when communication occurs between two or more members of the same board or commission. Chance social or ceremonial gatherings where commission

members are present usually fall outside the scope of sunshine laws, provided that matters that may come before the panel are not discussed.

Once applicable only when board or commission members physically gathered to conduct public business, some open meeting laws now regulate deliberations via teleconference, videoconference, and e-mail. Sunshine laws have been updated in a number of states to reflect advances in communications technology.

Open meeting laws often draw distinctions between types of meetings—regular, special, and emergency—when it comes to providing notice and taking minutes. Requirements as to advance notice of regular meetings vary widely. Anywhere from 24 to 48 hours’ notice tends to be the rule for special meetings. In many states, when emergency meetings are held, boards are required to use the most appropriate and effective means for providing notice. Some state laws set out strict procedural requirements for emergency meetings including an affirmative vote of a percentage of board members to hold the meeting;

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the provision of public notice as soon after the meeting as possible; and complete and accurate minutes that include a description of the nature of the emergency, details about the time, place, and manner in which notice of the meeting was provided, and an explanation as to how the need for such a meeting could not have been reasonably foreseen.

Public notice is required when a board or commission closes its doors to the public and meets in executive session. The permitted reasons for closing meetings vary from state to state, but most sunshine laws allow executive sessions to deal with personnel matters, enter into collective bargaining, confer with legal counsel, and discuss the sale or acquisition of public property. Public bodies, however, generally are prohibited from taking formal action in an executive session. Often, the only vote permitted in regard to a closed meeting is to either adjourn or recess the executive session.

Sunshine laws often dictate the manner in which a public body must take and make available minutes from its meetings. For open meetings, full and accurate minutes that allow the public to understand and appreciate the rationale behind a board's decisions are often required. In some states, minutes from executive sessions are not held to the same level of completeness. Instead, they need only reflect the general subject of discussion during the session.

Some laws require that public bodies allow both audio and video recordings of their proceedings. "Reasonable" rules regulating the use of such equipment in order to ensure that those in attendance can see, hear, and participate are permitted in many states that allow recording devices.

An array of consequences—including personal financial liability—may result from violations of state sunshine laws. Different standards will apply to different types of public officials (elected vs. appointed, for example). These laws often allow any individual who believes the law has been violated to seek judicial relief within a specified period of time. Decisions made or actions taken during a meeting held in violation of the law are generally held to be invalid. That does not mean, however, that a public body may not subsequently convene a public meeting in conformity with the requirements of the law and reconsider the public business that had been invalidated. The intent of most sunshine laws is not to inhibit a public body from performing its governmental functions but to insure that it does so in public. ■■

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