



PENNSYLVANIA'S SUNSHINE ACT (OPEN MEETINGS LAW)

Resource used for this fact sheet - <http://www.openrecords.pa.gov/SunshineAct.cfm>

Additional definitions have been added for clarity.

The [Pennsylvania Sunshine Act, 65 Pa.C.S. §§ 701-716](#), requires agencies to deliberate and take official action on agency business in an open and public meeting. It requires that meetings have prior notice, and that the public can attend, participate, and comment before an agency takes that official action.

The Office of Open Records (OOR) does not enforce the Sunshine Act, but it does provide training on the law. Following are answers to the most frequently asked questions the OOR receives regarding the Sunshine Act.

Here is a [list of bills and resolutions](#) introduced during the 2015-16 legislative session dealing with the Sunshine Act.

Which agencies are subject to the Sunshine Act?

Any state or local government body and all sub-units appointed by that body that perform an essential government function and exercises authority to take official action. It can include boards, councils, authorities, commissions, and committees. The Sunshine Act defines an "agency" as the "body and all committees thereof that are authorized to render advice or take official action" on behalf of the governing body.

What's considered a meeting?

The law defines a meeting as "any prearranged gathering of an agency which is attended or participated in by a quorum of the members of an agency held for the purpose of deliberating agency business or taking official action."

Note that the Sunshine Act applies any time a quorum deliberates agency business or takes official action, no matter the physical location of those deliberations or actions. The use of the term "prearranged" does not allow agencies to thwart the intent of the Sunshine Act simply by holding an unscheduled discussion about agency business.

(Definition of quorum: A quorum is the minimum number of voting members that must be present in order for the agency to conduct business. The number of members needed to form a quorum varies by the type of agency involved.)

Contact:

Lisa Graves Marcucci, lgmarcucci@environmentalintegrity.org

What's considered official action?

The definition of "official action" includes four categories:

1. Recommendations made by an agency pursuant to statute, ordinance or executive order.
 2. The establishment of policy by an agency.
 3. The decisions on agency business made by an agency.
 4. The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.
-

What's considered agency business?

The law defines agency business as "the framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise or the adjudication of rights, duties and responsibilities." Agency business specifically does *not* include administrative action (i.e., the execution or carrying out of previously approved official action or policies).

What notice must an agency provide prior to public meetings?

For regular public meetings, agencies must provide at least three days advance notice prior to the first regularly scheduled meeting of the calendar year, along with all further scheduled meetings for the remainder of the calendar year. The notice - which must include the date, time, and location of the meetings - must be printed in a newspaper of general circulation and posted at the location(s) where the meetings are to take place.

For a special or rescheduled public meeting, agencies must provide at least 24 hours advance notice, with the notice being printed in a newspaper of general circulation and posted at the location where the meeting is to take place.

Although not required by the Sunshine Act, including the purpose of a meeting in public notices, particularly a special meeting, is a good practice followed by many agencies. Some local government statutes, such as the Borough Code, require the subject to be included in special meeting notices (see 8 Pa.C.S. §1006).

(Definition of Special Meeting: Any meeting added to an elected body/agency scheduled after the regular scheduled meetings have been established and advertised to the general public.)

Contact:

Lisa Graves Marcucci, lgmarcucci@environmentalintegrity.org

Can the public comment during public meetings?

Yes. The Sunshine Act gives the public the right to comment on issues "that are or may be before the board." Agencies must provide a reasonable opportunity for residents and/or taxpayers to comment on an issue before a decision takes place.

Agencies are permitted to establish rules to oversee public comment by, for example, limiting the time for each commenter. The OOR encourages agencies to take care when imposing time limits on public comment. Three minutes is a common limit, and may be more than enough at most public meetings. However, it may not be adequate at certain meetings, such as when a complex draft budget is being discussed. It can be a good practice to allow for flexibility in any policy imposing time limits on public comment, taking care to ensure that the agency does not show partiality to some commenters over others.

Can the public ask questions during the comment period?

Yes. Although members of the agency are not *required* to provide an answer, it is certainly a good practice to do so whenever possible. Answering questions can demonstrate a commitment to helping constituents and, in many cases, answering questions informally at a public meeting can reduce future requests under the Right-to-Know Law, which saves time and money for both the agency and the commenter/requester.

Can public meetings be recorded?

Yes. The Sunshine Act allows meetings to be recorded with an audio recorder or a video recorder. It also allows agencies to issue rules concerning the use of recording devices in order to avoid any disruptions. However, such rules should not be an attempt to prevent a member of the public from recording a meeting.

Must agencies keep minutes of their public meetings?

Yes. Agencies are required to record the time, date, and place of their meetings; the names of the members present, the substance of all official action taken during the meetings, and a record of how each individual voted. The minutes also must list all members of the public who participated in the meetings and a summary of their comments.

What if a quorum is not present at the public meeting?

An agency cannot legally take official action if a quorum is not present. A quorum is the minimum number of voting members that must be present in order for the agency to conduct business. The number of members needed to form a quorum varies by the type of agency involved.

Contact:

Lisa Graves Marcucci, lgmarcucci@environmentalintegrity.org

Can an agency have a closed meeting?

An agency may discuss certain matters in Executive Session, which is not held in public. Some reasons an agency may hold an Executive Session include discussing personnel matters; holding an information, strategy and negotiation session related to the negotiation of a collective bargaining agreement; considering the purchase or lease of real property; and consulting with an attorney about active or pending litigation. The specific reason for an Executive Session must be announced in the public meeting either before or directly after the Executive Session. See *Reading Eagle Co. v. Council of City of Reading*, 627 A.2d 305 (Pa. Cmwlth. 1993), ("[T]he reasons stated by the public agency must be specific, indicating a real, discrete matter").

Closed gatherings may also be held "solely for the purpose of collecting information or educating agency members about an issue." See *Smith v. Township of Richmond*, 623 Pa. 209, 223 (Pa. 2013) ("[T]he Supervisors' four closed-door gatherings did not violate the [Sunshine] Act because they were held for informational purposes only and did not involve deliberations").

No official action can be taken during Executive Session or a closed gathering; all official actions must be taken during the public portion of a meeting.

What legal remedies are available for violations of the Sunshine Act?

Section 710.1(c) of the Sunshine Act permits anyone attending a public meeting to object to a perceived violation at any time during the meeting. Additionally, for state agencies, a member of the public can file a complaint with the Commonwealth Court. For local agencies, a member of the public can file a complaint with the local Court of Common Pleas. Any complaint must be filed within 30 days of the public meeting in which the alleged infraction occurred. If the alleged infraction occurred during a closed meeting, the complaint must be filed within 30 days of the discovery of the infraction, as long as it is no longer than one year from when the meeting was held. The person alleging the infraction bears the burden of proof. See *Smith v. Township of Richmond*, 623 Pa. 209, 223 (Pa. 2013) ("[I]n view of the presumption of regularity and legality that obtains in connection with proceedings of local agencies, the challenger [of an agency meeting] bears the burden to prove a violation") (internal quotation and citation omitted).

Are there penalties for violating the Sunshine Act?

Yes. In addition to being assessed attorneys' fees, any member of an agency who is found to have willfully violated the act can face criminal charges and is subject to fines of \$100 to \$1,000 for the first offense, and \$500 to \$2,000 for the second offense.

Contact:

Lisa Graves Marcucci, lgmarcucci@environmentalintegrity.org