

Issue Paper #1: Sunshine Law Summary and Recommendation

**Prepared for the Lake Jesup, Crane Strand, Crane Strand Drain, and Long Branch
BMAP Working Group
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Portions of this document were taken from the Florida Office of the Attorney General website: <http://myfloridalegal.com/sunshine>. This website provides additional background on the Florida Sunshine Law.

BACKGROUND ON THE SUNSHINE LAW & APPLICABILITY TO THE BWG

Q. What is the Sunshine Law?

A. Florida's Government-in-the-Sunshine law provides a right of access to governmental proceedings at both the state and local levels. Virtually all state and local public bodies are covered by the open meetings requirements with the exception of the judiciary and the state Legislature which has its own constitutional provision relating to access. The Sunshine Law is intended to expose government's *entire* decision-making process to public scrutiny, including all of the deliberations that precede a final action. This philosophy is consistent with the transparent nature of the BMAP process.

Q. What are the requirements of the Sunshine law?

A. The Sunshine law requires that 1) meetings of boards or commissions must be open to the public; 2) reasonable notice of such meetings must be given, and 3) minutes of the meeting must be taken.

Q. What agencies are covered under the Sunshine Law?

A. The Government-in-the-Sunshine 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." Thus, it applies to public bodies within the state at both the local as well as state level. It applies equally to elected or appointed boards or commissions.

Q. Are advisory boards which make recommendations subject to the Sunshine Law?

A. Advisory committees that are established solely for the purpose of *fact-finding* are exempt from the Sunshine Law. However, advisory committees established by public agencies that take formal action (i.e. provide formal recommendations) are subject to the Sunshine Law, even though their recommendations are not binding upon the entities that create them.

Q. How does this apply to the BMAP Working Group?

A. Up to this point, the Lake Jesup, Crane Strand, Crane Strand Drain, and Long Branch Basin Working Group (BWG) has been operating in a fact-finding mode. Thus, it has not been subject to Sunshine Law requirements. However, because it was established by the Department of Environmental Protection to provide guidance to the Department regarding adoption of the BMAP, when the BWG begins evaluating allocation options and making recommendations to the Department regarding related BMAP provisions, its activities will be subject to Sunshine.

An example of an issue that would be deliberated by the BWG would be a recommendation to use a specific allocation approach for the Lake Jesup Basin, such as the following:

- Step 1: Continue existing activities and projects in support of load reductions on MS4 implementation.

- Step 2: Level the playing field for MS4 activities using MS4 performance measures as a guide.
- Step 3: Implement planned or funded local load reduction projects, if needed.
- Step 4A: Implement regional treatment project(s), if needed.
- Step 4B: Develop and implement new local load reduction projects, if needed.

Q. What about staff support?

A. The Sunshine Law does not ordinarily apply to staff. However, when decision-making authority has been delegated to staff, the staffs' activities in carrying out that authority are subject to the Sunshine Law. For example, if a member has been delegated the authority to reject certain options from further consideration by the entire board, the board member is performing a decision-making function that must be conducted in the Sunshine. On the other hand, if a board member or designee has been authorized only to gather information or function as a fact-finder, the Sunshine Law does not apply. Because the BWG operates by consensus, all members are officially involved in decision-making.

Q. How will this affect the BWG meetings?

The Department will handle the official public noticing for BWG meetings. Meeting structure and processes will not need to change to accommodate Sunshine Law requirements.

DEPARTMENT RECOMMENDATIONS FOR BWG TO OPERATE FULLY UNDER SUNSHINE

Create a Steering Committee that would be the official consensus-making body for the basin. These members would vote and make the official recommendations to the FDEP. The Steering Committee would have the following characteristics:

1. Make official recommendations to the FDEP on BMAP language, projects and approaches;
2. Members would be subject to the Sunshine for issues that pertain to the BMAP;
3. Meetings would be held on an as-needed basis (approximately every 3-4 months), only when official decisions and recommendations are needed;
4. The meetings would also serve as a way to brief managers about the regulatory and financial implications to the BMAP activities.

Maintain a separate Working Group that would function as an information gathering and fact-finding group for the FDEP and could provide information to the Steering Committee. These would include local government and agency staff that coordinate MS4 activities among local jurisdictions. The Working Group would have the following characteristics:

1. Gather and review information about water quality monitoring, loads, land uses, and sources;
2. Review technical materials and provide input on projects and research;
3. Identify issues, concerns, and data that are needed for the BMAP and Steering Committee discussions;

4. Meetings would be held more frequently (approximately monthly) to provide information needed for decision-making.;
5. Participation on the Working Group under this structure would not interfere with local coordination of MS4 permit activities or other joint projects.

Considerations

- 1) Steering Committee members should be individuals who do not frequently meet to discuss details of MS4 permits (i.e. not regular attendees at the quarterly MS4 co-permittee meetings).
- 2) Such a structure would rely heavily on the BWG members to keep their Steering Committee member up-to-date on current BMAP activities and discussions.