

Sunshine Law Summary
Prepared for the Bayou Chico BMAP
August 11, 2009

For additional information regarding the Sunshine Law and its application, please see the Florida Attorney General's Sunshine Law website: www.myflsunshine.com. In addition, if you have more specific questions, it is advisable to see the advice of your organization's legal counsel.

BACKGROUND ON THE SUNSHINE LAW AND APPLICABILITY TO THE BASIN WORKING GROUP

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 have their 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. The Sunshine Law provides that no resolution or formal action shall be considered binding except as taken or made at an open meeting. The transparent nature of the BMAP process is consistent with this philosophy.

Q. What qualifies as an open meeting?

A. The Sunshine Law applies to all formal action taken by public bodies, including discussions and deliberations. The law applies to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss *some matter on which foreseeable action will be taken by the public board or commission*. There is no requirement that a quorum be present for a meeting to be covered under the law.

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 at both the local and 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 established solely for the purpose of *fact-finding* are exempt from the Sunshine Law. However, advisory committees established by public agencies to 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 Basin Working Group?

A. The Basin Working Group (BWG) has been established by the Florida Department of Environmental Protection to provide guidance to the Department regarding adoption of the BMAP. The BWG is expected to evaluate allocation options and make recommendations to the

Department regarding related BMAP provisions. Since the BWG is providing recommendations to FDEP, its activities are subject to all provisions of the Sunshine Law.

The BWG members will be asked for official consensus on BMAP items and to make official recommendations to the FDEP on BMAP language, projects and approaches. Meetings will be held on an as-needed basis, only when official decisions and recommendations are needed; furthermore, the meetings will serve as a way to brief managers about the regulatory and financial implications of the BMAP activities.

Q. How will the Sunshine Law affect the BWG meetings?

The Department will handle the official public noticing for BWG meetings. The meeting structure and recommendation processes will accommodate all Sunshine Law requirements. It is important that BWG members take care to ensure that they know who the other BWG members are and that they do not violate the Sunshine Law by discussing BMAP-related issues with other members outside of publically-noticed meetings.

Q. What about support staff and technical meetings?

A. The Sunshine Law does not apply to support staff who are not members of the BWG, or to the fact-finding activities conducted at technical meetings. However, the technical meetings are publicly noticed, minutes of the meetings will be taken and will become public record; furthermore, the Department will seek public input and comments at the technical meetings. However, given the fact-finding nature of the technical meetings and the fact that attendees will not make official recommendations to the Department, participants at these meetings are not subject to Sunshine's stricter requirements.

The stakeholders who attend the technical meetings will have the following tasks:

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

Technical meetings will be held more frequently to provide the information needed prior to decision-making by the Department and the BWG. Participation by the technical stakeholders in these meetings under this structure does not interfere with local coordination of MS4 permit activities or other joint projects.

Q: How does the Sunshine Law apply to BWG members who coordinate with staff within their own organizations and with other BWG members whose organizations jointly develop pollutant load reduction projects?

A: As explained above, the Sunshine Law restrictions apply only to formal members of the BWG; therefore, internal coordination between a BWG member and other members of his or her organization is not subject to these constraints. In addition, organizations that are represented on the BWG may continue to work together in developing pollutant reduction projects and propose these for inclusion in the BMAP. However, the Sunshine Law prohibits discussion between *members* of the BWG outside of a duly noticed public meeting on those matters which could foreseeably come before the BWG. Therefore, while BWG members may discuss BMAP projects with their own staff without violating the Sunshine Law, BWG members may not discuss these issues outside of publicly-noticed meetings with other members of the BWG.