



Information for Counties on Sunshine Act Compliance During COVID-19 Pandemic

Please note: This document does not constitute legal advice. Counties should consider the information provided below in consultation with their solicitors.

On March 6, 2020, Pennsylvania Governor Tom Wolf signed an emergency disaster declaration in response to the COVID-19 pandemic. In the weeks that followed, many counties approved similar declarations. Governor Wolf took further steps to control the spread of COVID-19 on March 19, 2020, by ordering all non-life-sustaining businesses to close their physical locations. In the wake of these measures, counties have been seeking guidance on how to perform essential business functions while ensuring compliance with open government laws, including the Sunshine Act. While there are no definitive answers, the guidance that is currently available is discussed below. Counties should consider the information in this document in consultation with their solicitors to develop plans for conducting public meetings during the COVID-19 pandemic.

What types of meetings are required by the County Code and the Sunshine Act to be open to the public?

Section 460 of the County Code, 16 P.S. § 460, requires all meetings of the county commissioners and of all boards, commissions, or authorities created by or operating as agencies of a county to be public meetings subject to the requirements of the Sunshine Act.

Section 704 of the Sunshine Act, 65 Pa.C.S. § 704, requires any "official action and deliberations by a quorum of members of an agency" to take place "at a meeting open to the public" unless an exception to the open meeting requirement applies (for example, an agency may hold an executive session closed to the public to discuss certain types of matters).

Typically, an agency must give at least 24 hours advance notice of a public meeting. Advance notice is not required, however, for an "emergency meeting," which is defined by the Sunshine Act as "a meeting called for the purpose of dealing with a real or potential emergency involving a clear and present danger to life or property."

Can members of a board participate in meetings remotely or telephonically?

Yes. Board members may participate in a meeting remotely provided that "the absent members are able to hear the comments of and speak to all those present at the meeting and all those present at the meeting are able to hear the comments of and speak to such absent members contemporaneously." See *Babac v. Pa. Milk Mktg. Bd.*, 613 A.2d 551 (Pa. 1992). Participation by speaker telephone satisfies this requirement.

How do state and county emergency disaster declarations modify Sunshine Act requirements?

Section 7501(d) of the Emergency Management Services Act, 35 Pa.C.S. § 7501(d) permits each political subdivision included in a declaration of disaster emergency to “exercise the powers vested under [the Emergency Management Services Act] without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements) pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes and the appropriation and expenditure of public funds.” While Sunshine Act requirements are not specifically discussed in the Emergency Management Services Act, this language can be interpreted to alleviate some public meeting and notice requirements provided that any action taken is related to the emergency.

What steps can we take to allow for public participation in meetings while adhering to social distancing guidelines?

Erik Arneson, Executive Director of the Office of Open Records (OOR), issued recommendations on compliance with the Sunshine Act during the coronavirus pandemic which can be found on the OOR’s website. Specifically, the OOR provides the following guidance:

- Meetings via teleconference, webinar, or other electronic method that allows for two-way communication are permissible in most circumstances.
- Agencies must provide a reasonably accessible method for the public to participate and comment at such meetings, which should be clearly explained to the public in advance of and during the meeting.
- Meetings should be recorded and made available to the public (preferably online).

Is any legislation pending to provide further clarification on these issues?

On March 25, the Pennsylvania House of Representatives unanimously approved HB 1564, which included language that attempts to clarify how governments can comply with the Sunshine Act when conducting meetings during declared disasters and emergencies. However, the legislation may not move forward in the Senate, and the chairman of the Senate Local Government Committee has indicated in media reports his belief that existing law and available guidance are sufficient, recommending that government agencies proceed with “good faith” and “common sense” in maintaining their operations while complying with the law. Even if the legislation does not move forward, the following elements of the bill can be taken into consideration by counties when developing plans for holding remote meetings:

- All members of the governing body must be able to speak to and hear the comments and votes.
- To the extent possible, the governing body must allow for public participation.
- The governing body must post notice of the meeting on its publicly accessible Internet website and, except where emergency circumstances dictate otherwise, via a newspaper of general circulation.

- The meeting must be livestreamed, recorded, or at a minimum, the draft minutes be made available within 48 hours of the meeting's conclusion.

What are the penalties for Sunshine Act violations?

Section 714 of the Sunshine Act, 65 Pa.C.S. § 714, provides, among other things, the "any member of any agency who participates in a meeting with the intent and purpose by that member of violating this chapter commits a summary offense" (emphasis supplied). The Pennsylvania District Attorneys Association has encouraged officials who are unable to comply with the Sunshine Act to "seek other ways of complying with the spirit of the law which is to ensure that the public at large has an opportunity to view their government in action." This can be accomplished through "conference calls, video chats, transcription of meetings or otherwise recording the meeting and making the recording publicly available or accessible."

What's next?

CCAP will continue to share timely and accurate information and updates on COVID-19. Please feel free to contact Lisa Schaefer at lschaefer@pacounties.org or at (717)-649-1541 if you have questions or need additional information.