



Testimony on Changes to Pennsylvania's Sunshine Law

Submitted by

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Good morning Mr. Chairman and members of the Committee. Thank you for inviting me to speak on proposed changes to Pennsylvania's sunshine law.

My name is Eric Montarti, Senior Policy Analyst with the Allegheny Institute for Public Policy, a non-profit, non-partisan research and education organization that has been promoting the ideas of limited government and free enterprise and defending the interests of taxpayers since 1995. Our organization is focused on issues related to southwestern Pennsylvania but the topics we research are both influenced by and have an influence on the Commonwealth as a whole.

The proposed changes set forth in the legislation affect every component agency in Pennsylvania, including political subdivisions such as counties, municipalities, authorities, and school districts, which are at the level of government on which our organization devotes almost all of our time and research effort.

The Allegheny Institute supports citizen access to government proceedings—within reason and so long as certain safeguards for the privacy and legal rights of citizens are observed—so that maximum transparency for citizens and taxpayers regarding the operations of government can be insured. Transparency and openness in the conduct of public business are key to fostering trust between citizens and their elected and appointed leaders.

The legislation before the committee would change sections of the Sunshine Act dealing with public notice and agenda business as outlined below.

Public Notice

Currently, notice of a governing body's regular schedule of meetings must be given once a year by advertising in a newspaper of general circulation at least three days prior to the first meeting and posting a notice of the meeting at the place where the governing body conducts its operations and business.

Pennsylvania is not too far out of line with the notice requirements of other states and what they stipulate for the bodies or entities that constitute what they would consider conducting public business. The Digital Media Law Project has a rather comprehensive, boilerplate summary of sunshine and open meeting law requirements for states, including the neighboring states of Ohio, New York, and New Jersey, and those requirements typically involve setting an annual meeting schedule prior to the first annual meeting, transmitting the notice to newspapers of general circulation, and posting the notice of meetings at the place where business is conducted. Only Ohio leaves the decision up to the public body itself without specificity, noting that there should be "a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings..."

The amendment proposed for public notice would require an additional notice for subsequent regular meetings throughout the year at least 24 hours before the meeting is to take place. That is to say, an agency would make a public notice of its regularly scheduled meetings for 2015 by advertising in a newspaper, but then would have to make a public notice for meetings taking place after January. While this gesture seems to do a lot to keep citizens informed—assuming they missed the notice of the meeting schedule when it was made public prior to the start of

2015, have not checked the agency's website, or have not reached out to an official of the agency—it may be a bit burdensome, both logistically and financially, to submit a notice up to eleven more times in print. The posting of the notice at the municipal building does not seem as burdensome.

It seems that a possible solution would be to expand the definition of public notice—at least for regularly scheduled meetings of an agency with the exception of the first scheduled meeting of the calendar or fiscal year—to include electronic communication, including Internet, e-mail, and texting capabilities. This would allow for an agency to submit its public notice for its annual meeting schedule to a newspaper of general circulation prior to the first meeting, but in addition to last minute newspaper notifications that might not reach interested parties in time, would provide information to people who wish to avail themselves of the internet and phone options as well web site postings. If a meeting is taking up extraordinarily important items, it might be a good idea to look at a radio notice as well.

Taken together, all of these methods should insure that interested citizens will have ample notice. That would allow for citizens to be reminded that there is a regularly scheduled meeting coming up, and would allow for the agency to disseminate the reminder rather quickly. Of course, this approach may not work well for all agencies, especially political subdivisions that are not up to speed with technological capabilities.

Finally, I would suggest the bill contain a definition section that updates what notification means. Then too, except in case of need to for a hurry up emergency meeting, the bill might specify a 48 hour advance requirement for notification.

Agenda Requirements

The second aspect of the changes to the Sunshine Act before the committee involves the publication and adherence to an agenda for a public meeting. The section on “notification of agency business to be considered” requires that an agenda be included in the public notice that announces the agency's regularly scheduled meetings—with the exception of the notice announcing the schedule of meetings for the year. Language after that section allows for the publication of the agenda on the agency's “publicly available Internet website” along with the location of the meeting and to the public in attendance.

Then there is the last section that deals with “notification of agency business required” and that agencies may only conduct action on business stated on the agenda. There are exceptions to what would be defined as emergency business but clearly the intent is to ensure that an item not on the agenda for that month cannot be considered until it appears on the agenda, likely the following month.

This does prevent the insertion of “surprise, last minute” items that could involve major policy issues that did not appear on the agenda. A clear agenda that is adhered to can let a citizen know if he or she needs to appear at a public meeting to have their say on an issue, or if they should choose not to attend that month's meeting.

Reaction from Local Officials

In order to ascertain the possible effects of the proposed changes on local governments in our part of the state, I attempted to contact officials charged with clerk functions, or those that are board secretaries, or Right to Know officers, and sometimes a combination of each, at local governing bodies in Allegheny County. Mind you this was not an exhaustive, randomly sampled, statistical survey but an inquiry to get reaction to the changes from officials who would have to comply with the requirements.

Reactions to the public notice portion of the changes included lukewarm reception to having to run a newspaper ad to make notification that a subsequent meeting during the year was going to take place. Cost certainly could be an issue, but also the required action of arranging a notice once a month after the annual notice has been made.

There was also some trepidation on the issue of agenda business and taking official action on items that might not appear on the agenda that month. Consider that a political subdivision may have written up an agenda with items A through F to be considered, publish the agenda along with the public notice, and then an item crops up that does not constitute an emergency but has to be dealt with. Under the proposed changes the item would have to be put off until the following month when it can be put on an agenda.

One other municipality that has very capable technology felt that any new requirements via changes to the Sunshine Law would not be problematic and that they are already practicing a very open form of government.

Conclusion

In the internet age, citizens with email or who are able to receive texts could certainly be sent a notice of an agenda addendum after a 24 notice has gone out without a whole lot of effort. This would require that interested citizens have their contact info registered with the agencies they are interested in, especially school boards and municipal government bodies.

With some minor adjustments, specifically to the notices that don't come at the beginning of the year, the changes proposed in the legislation seem to be fairly reasonable to keeping the citizenry informed of the ongoing proceedings of their government.

Thank you again for inviting me to testify. That concludes my prepared comments.

Sources

Pennsylvania General Assembly, HB 2408, Printer's Number 3936

Pennsylvania Department of Community and Economic Development, Open Meetings, 3rd Edition June 2014

Pennsylvania General Assembly, 65 PA CSA pertaining to the Sunshine Law

Digital Media Law Project, Access to State and Local Government Meetings
<http://www.dmlp.org/legal-guide/access-state-and-local-government-meetings>

Phone and E-mail Conversations with officials of the following:

Baldwin Borough

Allegheny County Airport Authority

Local Government Academy

North Hills School District

City of Pittsburgh