

# Pennsylvania Freedom of Information Coalition

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## Remarks on Pennsylvania's Sunshine Act and HB 2408

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House State Government Committee

My name is Kim de Bourbon, and I am executive director of the Pennsylvania Freedom of Information Coalition, a nonprofit educational group that helps people understand and use the state's open meetings and open records laws. We work to improve transparency at all levels of state and local government.

We promote good citizenship by helping people stay informed about what their government is doing, although this a job we believe government — especially on the local level — should be doing better at itself.

One of the things the PaFOIC does is actively answer questions about the Sunshine Act and Right to Know Law on our online Open Government Forum. Since the website was launched in 2007, we have fielded almost 3,000 posts — many of them questions from regular citizens frustrated by shortcomings in the state's open meetings law.

HB 2408 addresses one of those major shortcomings: the fact that boards are *not* required to prepare an agenda.

It also addresses the loophole that even if an agency does prepare an agenda in advance of a public meeting, it does not have to make it available to the public in time for it to be useful to them.

Because of course while the Right to Know Law makes sure all meeting agendas are a matter of public record, the law does nothing to make sure they get into the hands of the public *before* the meeting.

The Right to Know Law is simply not concerned with timelines, with making sure records are provided in time for them to be useful to the citizens who request them.

Put simply, right now if an agency prepares an agenda two or three days before a meeting, it can require citizens to submit a formal Right to Know Request in writing to obtain it ... and then it is under no legal obligation to respond to the request for five business days. It could also postpone access to an agenda for another 30 days after that if it wished to, claiming perhaps “staffing limitations.”

Although this is the letter of the law, I think we can all agree that this is certainly not in the spirit of government transparency. This loophole needs to be closed, and HB 2408 would do it by requiring that an agency record on an agenda all business to be considered at a public meeting, and include the agenda in a notice published at least 24 hours in advance of the meeting.

We like this provision. We do think, however, that 24 hours is not quite enough advance notice, and that a 48- or even 72-hour period is more reasonable to make sure the public has an opportunity to see it and prepare comments on it in advance of the meeting, should they wish to do so.

Once all those with business before the agency are aware of this deadline, we see no reason why at 48- or 72-hour agenda timeframe could not be easily met, and in fact would improve the meeting process by curtailing any rushed, last-minute additions.

We also rejoice in the provision that requires posting of the agenda on the agency’s website. (Surely more should be done within the Sunshine Act and Right to Know Law to require posting of public documents online. Not only does this greatly increase transparency and give the public easier access to documents, it greatly lightens the burden on agencies to provide copies of what should be routinely provided public records.)

However, we do feel that the timeframe in this last notification provision — Section 709(c.1)(3) — should be specific. It now says only that the agenda shall be posted at the meeting and on the agency website, but does not specify *when* that should take place.

Posting it on the website and meeting location at the same time the agenda is *submitted* for publication in the meeting notice should be required. As soon as the agenda is finalized and sent to the newspaper of record for publication, it should be posted online and at the meeting site.

(It would not serve the public well if the agenda for a 7 p.m. meeting was not posted online or on a bulletin board until 7 p.m. the night before, for example, although that would meet an assumed “24 hour” requirement for posting.)

We also feel the language requiring the agenda to be made “available to individuals in attendance at the meeting” must be clarified. Does this require paper copies be made for everyone? Or would a projected electronic version suffice to allow the public to follow along at the meeting?

Perhaps the most essential provision in HB 2408, however, is the requirement that no official action be taken on an item of business unless it has been included on the agenda published before the meeting, thus not allowing an agency to take the public by surprise with unadvertised business.

While some agencies may consider this provision is too limiting, we feel government cannot be considered transparent and accountable if an agency is permitted to add action items to an agenda after it is published.

As the law now stands, it is easy for an agency to keep quiet about controversial decisions that are about to be made or to try to hide upcoming action from the public, often in an attempt stifle or reduce public comment during the meeting.

Which leads to another argument in favor of this essential provision:

Mandating that all action items be placed on a publicly available agenda in advance of the meeting ensures the public has a voice on the issue. This is clearly the intent of the Sunshine Act’s public participation provision, which says residents and taxpayers shall be given *“reasonable opportunity ... to comment on matters of concern, official action or deliberation which are or may be before the board or council prior to taking official action.”*

Some agencies set aside time only at the beginning of a meeting for public comment. While this is clearly permissible under the Sunshine Act, if all matters before the board are not made public in advance of the meeting, an agency is free to take up business without giving the public a chance comment on it, directly violating the important public participation provision in the law.

Those concerned with the “no deliberation or action unless on the agenda” part of HB 2408 should note that the bill makes it clear an agency is still empowered to act quickly outside of this provision in the case of emergencies.

There are other parts of the Sunshine Act that need addressing, and we hope other amendments and revisions will be considered, especially HB 1671, the bill we testified on earlier this year which would require all executive sessions to be recorded, among other changes.

The provision on meeting minutes remains problematic, since the Sunshine Act requires only a written record of “the substance of all official actions,” but does not require a record of deliberation and discussion.

At some municipalities, this leaves minutes — the official record of public business — very “bare and uninformative,” in the words of one of the posters on our forum.

And of course, the law continues to allow agencies to ignore it — willfully or otherwise, especially regarding the executive session provision — and to adopt a “so, make us” attitude when faced with Sunshine Act complaints. Citizens who think their government should be more transparent have no real recourse but to try persuasion, and if that doesn’t work, to file a court complaint to try to make an agency change its secretive ways.

We don’t feel citizens should have to go to court to make the Sunshine Act work.

Please do take a minute to go to the Forum section of [pafoic.org](http://pafoic.org), and read some of the experiences people are having with their government officials.

We again respectfully ask you to remember that the premise of the Sunshine Act is to make government more transparent and its officials and agencies more accountable for their actions by having their discussions and debates in public.

We ask that this committee therefore please give careful consideration to HB 2408 and to all parts of the Sunshine Act that need improving. Please listen to all sides, but give extra consideration on behalf of citizens, for whom this law was written.

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