

# COUNCIL FOR EDUCATION POLICY RESEARCH AND IMPROVEMENT

## Survey on Florida's Government-in-the-Sunshine Law

### SUMMARY

As a part of its examination of quality leadership in Florida's education system, the Council for Education Policy Research and Improvement (CEPRI) conducted a survey of state education leaders (school board and trustee board chairs, superintendents and presidents) in order to assess the influence of Florida's Government-in-the-Sunshine Law on the functioning of school boards and boards of trustees in the State and to consider ways to improve the operation and effectiveness of these boards. Forty-two responses were received and are summarized below.

The survey of Florida education leaders reveals a mix of opinion in regard to the Sunshine Law, with no unanimity. Responses include worthy points of consideration in support of the law, points of concern regarding how the law may impede effective school/institution board management and recommended revisions to the law. Concerns and recommendations focus on the procedures that must be followed to hire and employ presidents/superintendents and the impact of the law on specific personnel issues and policies.

### Impact of Sunshine Law on School Board operation and effectiveness

	<u>Responses</u>
Positive Impact:	17
Negative Impact:	17
No Impact:	8

### Positive Comments

- Decisions are made in public view.
- Belief in the public's right to know.
- Board members are well-aware of the Law; the Law is working and does not impede the operation of the institution.
- The Law is the best friend to accountability in government and forces discussion to take place in public. Public information, promoting transparency of the process and supporting documentation can assist in deterring influenced or poorly made decisions.
- Law keeps conflicts of interest from occurring.
- The Law is an appropriate rule for operation of all of government and does not need significant revisions.

### **Points of Concern**

- Strong, experienced education leaders are reluctant to apply for open executive (president/superintendent) searches due to early public disclosure of their candidacy.
- Public performance evaluations inhibit frank discussions and discourage members from sharing information, collaborating or communicating concerns.
- The Law inhibits the free flow of ideas and opinions and imposes unreasonable burdens on the ability of a university to operate efficiently and to respond to daily challenges.
- The inability of board members to discuss issues with each other tends to allow the administration to control the presentation of information and the path of the board and prevents the open discussion of problems.
- Labor negotiations in the open create a distorted view of the process.
- Public negotiation of real estate transactions can drive up property costs.
- The requirement of publishing notices of rule development and notices of rule adoption is a waste of time and money.
- The Law's limitation on attorney-client privileges severely limits the ability of the board to address potential legal issues before they become litigation matters.

### **Recommendations of Respondents**

- The preliminary hiring process to identify candidates for executive leadership positions and to identify trustees should occur in private. When finalists are identified, the process should proceed according to the Law.
- Negotiation of real estate transactions should occur in executive session and acted upon in public.
- Labor negotiations should occur in private within the collective bargaining laws.
- Special provisions should be developed for the resolution of individual or sensitive personnel issues. Personnel records should not be open to public review.
- Performance evaluations, board self-evaluations and job candidate evaluations should be conducted in a private, executive session.
- While public votes and discussions need to occur in the open, board members need the freedom to become more informed between board meetings via interactions with other, more experienced board members and with the administration. Experienced board members should be allowed to train and work with new members outside of scheduled meetings.
- Colleges should be exempt from all notice requirements in the rulemaking process.
- Meetings among board chairs and/or university presidents, meetings of a board with its attorneys and university committees should be exempt from the Law.

# COUNCIL FOR EDUCATION POLICY RESEARCH AND IMPROVEMENT

## Florida's Government-in-the-Sunshine Law

### E-mail Survey

As a part of its examination of quality leadership in Florida's education system, the Council for Education Policy Research and Improvement (CEPRI) is reviewing the influence of Florida's Government-in-the-Sunshine Law on the functioning of school boards and boards of trustees in the State and is considering ways to improve the operation and effectiveness of these boards.

The Council's focus will be on the identification of specific components of the Sunshine Law that may need to be addressed to improve education governance in Florida. It is not the Council's intention to recommend elimination of the law or numerous revisions to the law.

State education leaders (school board and trustee board chairs, superintendents and presidents) are invited to respond to the following questions. Results will be compiled and individual responses will not be presented to the Council.

**Based on your experiences in the management of your school board/institution, please reply to these questions via this E-mail.**

1. **What impact does Florida's Government-in-the-Sunshine Law have on the operation and effectiveness of your board?**

Positive \_\_\_\_\_ Negative \_\_\_\_\_ No impact \_\_\_\_\_

2. **If negative, please identify a few (1-3) specific components of the law that you would like to see modified and provide your specific recommendation for improvement.**

3. **Please provide any additional comments or suggestions below:**

## **SURVEY RESULTS**

### **I. School Board Chairs**

#### **A. Impact of Sunshine Law on School Board operation and effectiveness**

Positive Impact: 3  
Negative Impact: 3  
No Impact: 1

#### **B. Comments and/or Recommendations**

- The Laws are the best friend to accountability in government and forces discussion to take place in public. Public information, promoting transparency of the process and supporting documentation can assist in deterring influenced or poorly made decisions.
- The Law prevents some board members from getting all of the information prior to meetings. Board members should be able to discuss issues and share information prior to meetings.
- The Law should be amended to offer the capability of letting experienced board members work with and coach new members.
- The current Law is working; the benefits outweigh the negatives.
- The Law requires public evaluations and board members are unable to collaborate on evaluations. As a result, evaluations become paper evaluations that are collated by the attorney.
- Special provisions for personnel issues should be provided in the Law.
- Personnel issues should not be discussed in the open, particularly when an individual has health issues or may be wrongly accused.
- The Law is problematic when negotiating for property. Site (land) purchasing in the open drives up the price of real estate.
- Public executive searches inhibit candidates from applying for high level positions.

### **II. School District Superintendents**

#### **A. Impact of Sunshine Law on School Board operation and effectiveness**

Positive Impact: 8  
Negative Impact: 1  
No Impact: 1

#### **B. Comments and/or Recommendations**

- The Law helps board members to not make decisions outside of the board meetings.
- The Law discourages “deals” among elected officials and discourages the appearance of “shady” politics.

- The Law places the board at a disadvantage in the negotiation of real estate transactions. Such work should be allowed in a protected environment similar to special sessions for settlement actions.
- Florida is at an extreme disadvantage in recruiting superintendents in the “sunshine” as many professionals are reluctant to subject themselves to public disclosure early in the process.
- The requirement that board members must only meet in the sunshine has not been a problem.
- Labor negotiations conducted in front of the media and public create a distorted view of an acrimonious relationship. Provisions for allowances out of the sunshine should be considered as long as Florida’s collective bargaining laws are maintained as currently written.
- I strongly believe in the public’s right to know all facts and would not recommend many changes.

### **III. Community College Trustee Chairs**

#### **A. Impact of Sunshine Law on Board of Trustees operation and effectiveness**

Positive Impact:       1  
 Negative Impact:       5  
 No Impact:               3

#### **B. Comments and/or Recommendations**

- Hiring a president in the “sunshine,” eliminates many excellent applicants who do not want their name disclosed until they become a finalist.
- Not being able to talk with other board members tends to allow the administration to have the controlling hand in presenting information about problems and prohibits the open discussion of problems that need collaboration.
- Not being able to discuss presidential evaluations in a closed meeting hinders board members communicating on concerns.
- Having to operate in the sunshine tends to cover up problems, keep the board in the dark and allows the administration to steer the board with just the information that they want the board to see.
- Board members need to be able to discuss vision and philosophies without having them become carved in stone by the public or media.
- The Law has a negative impact on presidential searches, with applications becoming public record, and precludes frank discussion between board members about presidential performance.
- The Law should be amended for presidential searches and trustee recruitment.

### **IV. Community College Presidents**

#### **A. Impact of Sunshine Law on Board of Trustees operation and effectiveness**

Positive Impact: 3  
Negative Impact: 4  
No Impact: 3

**B. Comments and/or Recommendations**

- The Law keeps good people from applying for presidential positions in Florida because they do not want their name made public, at least in the application stage.
- The Law should be amended to allow district boards to conduct executive searches privately, at least until the finalist stage.
- The Law is good and keeps conflicts of interest from occurring. Exemptions should be in place for sensitive personnel and job search matters and certain legal concerns.
- All board members are well aware of the law and the law does not impede the operation of the college.
- The Law should be amended to: permit board members to talk to one another outside of board meetings, permit boards to discuss individual personnel evaluations and permit boards to conduct presidential searches outside of the Sunshine.
- Personnel records should not be open to public review.
- Board members need to have the freedom to become more informed between board meetings via interactions with other more experienced board members and the president.
- Many good presidential candidates shy away from considering Florida institutions due to early public disclosure.
- Boards should be able to discuss certain issues in executive session, but continue to require that all actions be taken in open meetings. Issues include personnel matters, real estate, collective bargaining and litigation. Minutes should be required of such meetings.
- Any two members of a board should be able to have unrestricted private conversations regarding any issues.
- The requirement of publishing notices of rule development and notices of rule adoption in local newspapers is a waste of time and money and creates opportunities for inadvertent miscues, as the colleges already follow a collegial process in policymaking.
- Colleges should be exempt from all notice requirements in the rulemaking process.
- Board should be able to have private workshops for board self-evaluations, job candidate evaluations or board development.
- The Law is an appropriate rule for operation of all of government and does not need significant revisions.

**V. State University Trustee Chairs**

**A. Impact of Sunshine Law on Board of Trustees operation and effectiveness**

Positive Impact: 1  
Negative Impact: 1  
No Impact: -

**B. Comments and/or Recommendations**

- Search Committees: Law negatively impacts the ability of universities to recruit high quality candidates who are employed at other institutions and may not wish for their candidacy to be made known to their current employer.
- University committees: Law imposes unreasonable burdens upon the ability of a university to operate efficiently and to respond to daily challenges and inhibits the free flow of ideas and opinions. University committees should be exempt from the Law.
- President evaluations: Law inhibits the ability of board members to provide a meaningful review due to their hesitancy to fully discuss performance issues in public. Law should be revised to allow the board to go into executive session solely for the purpose of conducting these reviews.
- Legal Counsel: Law’s limitation on attorney-client privileges severely inhibits the ability of the board to address potential legal issues before they become litigation matters. It is recommended that the Law be amended to exempt all meetings of the board with its attorneys.
- The Law should be amended to exempt meetings among board chairs and/or university presidents.

**VI. State University Presidents**

**A. Impact of Sunshine Law on Board of Trustees operation and effectiveness**

Positive Impact: 1  
Negative Impact: 3  
No Impact: -

**B. Comments and/or Recommendations**

- Public votes and discussions need to be in Sunshine, but members need to be able to meet and have conversations about issues one-on-one.
- Search process for key university administrative positions should be shielded from the Law, or given more leeway than at present.
- Some subject matter on board agendas should be discussed and voted on in executive session with results reported in open session.
- The Law keeps operations in the purview of public review, but having an open search is a handicap in attracting quality candidates into a large pool. Search should remain private until finalists of three to five are presented to the board for consideration; then search would become public.
- Evaluation of President: There needs to be opportunity for trustees to meet privately to discuss job performance, similar to faculty academic process.