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## **Keep the Door Open Weak Sunshine Act Leaves Public in Dark**

**By Michael Berry**

Earlier this year, the General Assembly passed a new Right to Know Law to make government more transparent by providing greater access to public records. While officials around Pennsylvania prepare for that landmark reform to go into effect in January, many of those same officials are closing the door on public access to government meetings.

The Sunshine Act has long provided that “official action and deliberations by a quorum” of government officials must “take place at a meeting open to the public.” The law gives citizens the right to “attend all meetings ... at which any agency business is discussed” or votes are cast. This mandate is simple and straightforward.

Yet, local governments routinely flout the law, holding closed budget “workshops,” private “briefings,” and confidential “question-and-answer sessions.” Whatever they are called, these meetings violate the law. The public cannot do much about it, however, because the Sunshine Act’s enforcement provisions are shamefully weak and rarely enforced.

A recent situation in Philadelphia is instructive.

This month, the mayor met with City Council to discuss the city’s budget shortfall behind closed doors, secured by an armed guard. As the meeting began, two Philadelphia newspapers filed an emergency suit, asking a judge to protect their right to attend the meeting. By the time the judge heard their arguments, the meeting was over and the harm was done. The public had been shut out.

Adding insult to injury, the judge denied the newspapers’ request to block future secret meetings. He explained that the newspapers could not prove a Sunshine Act violation because they could “offer no evidence as to what occurred or what was discussed at the meeting since they were not present.”

The judge also suggested the papers had no remedy since council had taken no official action at the closed-door session.

The Philadelphia ruling is consistent with other court decisions, which place the burden of proving a Sunshine Act violation on the citizen who was excluded and which permit the government to avoid any penalties for secret deliberations as long as it votes in public. What good is a law that provides broad rights, but offers people no way to protect them?

The General Assembly must restore the public trust and fix the Sunshine Act through a few common-sense reforms:

\* If a meeting is closed, the government should bear the burden of establishing the closure is proper. The government carries this same burden when it denies public access under the Right to Know Law and when it seeks to close court proceedings. There's no reason the law should be any different for government meetings.

\* When a quorum meets behind closed doors, the agency should be required to record minutes of the meeting. The law already requires agencies to take minutes of open meetings. It should do the same when meetings are closed. This would give courts evidence of what transpired, and, if the meeting was supposed to be open, it would allow the public to review a record of what officials actually discussed.

\* The act's enforcement provisions must be strengthened so officials think twice before skirting the law. The current \$100 fine should be increased dramatically. And officials should be required to pay out of their own pockets. The state Senate passed these proposals in the spring, but they stalled in the House.

\* If the government closes a meeting based on an unreasonable reading of the Sunshine Act, it should pay the attorney's fees of any citizen who successfully sues to open the meeting. The cost of filing suit stands as a real barrier to citizens' ability to vindicate their rights. Too often, gross violations go unchecked because the public cannot afford to challenge them. If the government unreasonably shuts the public out, it should pay the bill.

Now that the General Assembly has reformed the Right to Know Law, it should turn its attention to the Sunshine Act. The public not only has a right to know what's in government records, it has a right to know what happens at government meetings. Both rights are vital to our democracy, and both should be protected.

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