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Open Meetings, Increasing Risk: Pennsylvania Sunshine Act Compliance for Nonprofit and Quasi-Governmental Boards

WRITTEN BY

Deborah J. Enea

KEY POINTS

- The Pennsylvania Supreme Court's 4-to-3 decision in *Coleman v. Parkland School District* (2025) established that the Sunshine Act's majority-vote provision is a standalone exception allowing agencies to add agenda items mid-meeting — but only if five specific procedural steps are followed.
- HB 2146, passed by the Pennsylvania House 193-9, and SB 1150, passed unanimously by the Senate, would significantly narrow the *Coleman* majority-vote exception and are pending in the opposing chambers as of August 2026.
- The Sunshine Act's "agency" definition extends beyond traditional government bodies to include nonprofit boards, housing authorities, and volunteer fire companies that perform governmental functions, exercise governmental authority, or receive substantial public funding.
- Section 715 of the Sunshine Act authorizes any person — without showing traditional aggrievement — to challenge a procedural violation within 30 days, creating broad litigation exposure for boards that miss compliance steps.
- Common Sunshine Act violations include inadequate executive session announcements, generic agenda headings, recording prohibitions, email votes outside a noticed public meeting, and serial communications that collectively constitute an out-of-meeting deliberation among a quorum.

Three developments have fundamentally unsettled Pennsylvania Sunshine Act compliance for nonprofit and quasi-governmental boards: a controversial Supreme Court ruling, pending legislation that would reverse it, and tightening judicial scrutiny of executive sessions.

I. THE COLEMAN DECISION AND ITS UNCERTAIN FUTURE

In *Coleman v. Parkland School District*, 346 A.3d 1266 (Pa. 2025), a divided Pennsylvania Supreme Court confirmed that a public agency may add items to a meeting agenda by majority vote, but must follow specific procedural steps. That holding may be short-lived: House Bill (HB) 2146, which would significantly narrow the majority-vote exception, passed the Pennsylvania House in July 2026 and is pending in the Senate.

Background. Section 712.1 of the Sunshine Act (65 Pa. C.S. §§ 701–716) requires agencies to post meeting agendas at least 24 hours in advance and prohibits deliberation or official action on matters not included in the posted agenda. The statute provides four exceptions: (1) emergencies involving a clear and present danger to life or property; (2) matters that are de minimis in nature, did not exist or could not reasonably have been known 24 hours before the meeting, and do not involve expenditure of public funds or entry into a contract; (3) citizen referrals to staff or committee; and (4) addition by majority vote. The de minimis exception is narrower in practice than its label suggests: both prongs must be satisfied, and a board's self-serving characterization will not insulate its action from judicial review.

The Holding. The Parkland School Board amended its agenda during a meeting to approve a collective bargaining agreement ratified by the teachers' association earlier that day. A resident challenged the action. The Commonwealth Court held that the majority-vote provision was a procedural mechanism rather than a standalone exception. The Supreme Court reversed, holding that the statute's plain language creates four independent exceptions and that majority vote is a standalone basis for adding agenda items during a meeting.

Procedural Requirements. Invoking the majority-vote exception requires five specific steps: (1) a separate vote to amend the agenda, distinct from the substantive vote; (2) a public announcement of the reason the item was not on the posted agenda, made before the amendment vote; (3) an opportunity for public comment before substantive action; (4) posting of the amended agenda within 24 hours; and (5) documentation in the minutes of the amendment vote, announced reason, and official action taken. Failure to follow these steps could render the action voidable under Section 713. Under Section 715, any person, not merely an aggrieved party, may bring a challenge within 30 days of the meeting, or within 30 days of receiving actual or constructive notice of the action.

Legislative Response: HB 2146. The 4-to-3 split in *Coleman* prompted an immediate and bipartisan legislative response. HB 2146, introduced by Representative Robert Freeman and passed by the House on July 1, 2026, by a vote of 193-9, would limit last-minute agenda additions to emergencies, genuinely trivial matters, and minor administrative items inadvertently omitted from the agenda whose delay would cause hardship, effectively eliminating the open-ended majority-vote exception *Coleman* recognized. The bill is currently before the Senate State Government Committee. Separately, the Senate unanimously approved its own companion measure, Senate Bill (SB) 1150 (Stefano/Coleman), which is now pending in the House. With both chambers having passed a narrowing bill and the next Senate session scheduled for September 28, 2026, enactment appears likely in the near term. Boards should treat the majority-vote exception as a last resort now, and be prepared to revise their procedures promptly if and when legislation is enacted.

II. IMPLICATIONS FOR NONPROFIT AND QUASI-GOVERNMENTAL BOARDS

While *Coleman* involved a school district, its holding applies to all "agencies" under the Act, a term that extends well beyond traditional government bodies. Section 703 defines "agency" to include any organization created by or pursuant to a statute that declares the organization performs an essential governmental function and exercises governmental authority through the joint action of its members. Courts apply a functional, multifactor analysis; organizations with any combination of public funding, government-appointed members, or statutory mandates should seek counsel to evaluate their status.

Organizations at particular risk include public library boards, housing and redevelopment authorities, nonprofit boards managing public assets under statutory mandates, community development corporations, and volunteer fire companies receiving substantial municipal funding (see *Pysher v. Clinton Township Volunteer Fire Co.*, 299 A.3d 196 (Pa. Commw. 2023) (applying an analogous agency test under the Pennsylvania Right-to-Know Law (RTKL), 65 P.S. §§ 67.101–67.3104)).

The Enforcement Environment Is Tightening. The act's citizen-suit provision is broad: Section 715 authorizes any person to file suit based upon an alleged violation without the need to show traditional aggrievement, and recent decisions confirm that even routine procedural lapses generate litigation (see *Beckes v. North East School District* (Pa. Commw., No. 1248 C.D. 2024, Sept. 3, 2025)). Smaller nonprofit boards face proportionally greater risk than well-counseled governmental bodies.

III. COMMON COMPLIANCE GAPS

The most common compliance failures we encounter include:

- **Executive sessions:** A recurring source of litigation is the failure to provide sufficiently specific public announcements before entering executive session. Under *Reading Eagle Co. v. Council of City of Reading*, 627 A.2d 305 (Pa. Commw. 1993), a generic recitation, such as "personnel matters," "litigation," or a bare invocation of attorney-client privilege, does not satisfy the act. The announcement must be specific enough to convey to those present that there is a real, discrete matter the board has determined warrants closure, and boards should never use the same formulaic language for different matters. Additionally, agencies must *recess* into, not *adjourn* into, executive session.
- **Annual meeting schedule:** Section 709(a) requires publication in a newspaper of general circulation at least three days before the first meeting of the calendar year. The act has not been amended to permit online-only substitution; covered agencies should satisfy the print requirement and supplement it with website and social media notice as best practice.
- **Agenda posting:** No 24-hour posting, or agendas with generic headings ("Old Business," "New Business") lacking item-specific descriptions.
- **Committee meetings:** The Sunshine Act applies to committees authorized to take official action, *i.e.*, those that can bind the agency or make decisions with legal effect. Purely advisory committees occupy a more contested position, and boards should review each committee's governing documents to determine whether the act applies.
- **Recording and minutes:** Section 711 gives any person attending a public meeting the right to record all proceedings; policies that prohibit recording violate the act. Section 706 requires individual roll-call votes to be recorded in the minutes.
- **Written consent:** For covered agencies, action by written consent or email vote outside a duly noticed public meeting is almost certainly a violation. Section 704 requires official action to be taken at a meeting open to the public, and the act's requirements are stricter than the written consent procedures available under the Nonprofit Corporation Law of 1988. Boards should obtain legal counsel before using any written consent procedure.
- **Walking quorums and serial communications:** The prohibition on out-of-meeting deliberation extends beyond group emails. Because the act defines a "meeting" as any gathering of a quorum for the purpose of deliberating agency business, regardless of format or location, serially circulated messages that collectively involve a quorum can implicate the act even when no single exchange does. Board members should confine pre-meeting communications to scheduling, logistics, and informational materials, and seek counsel before circulating anything that solicits a substantive position on a pending matter.

IV. RECOMMENDED ACTIONS

Boards that may qualify as agencies, or that have chosen to comply as a matter of good governance, should:

- **Adopt a formal agenda-posting procedure** with a designated responsible officer and a 24-hour timeline. The agenda must be posted at the meeting location and the agency's principal office; if the agency maintains a publicly accessible website, it must also be posted there.
- **Develop a script for the *Coleman* majority-vote procedure** so the board is prepared if an item not included in the posted agenda must be addressed during a meeting, and treat that procedure as a last resort pending the outcome of HB 2146.
- **Review and update executive session announcement practices** to ensure that each announcement

identifies the specific subject matter and statutory basis for closure in terms meaningful to the public.

- **Review and update minute-taking practices** to ensure individual roll-call votes, executive session documentation, and public comment records are captured.
- **Confirm that any recording policy permits**, rather than prohibits, public recording, subject only to reasonable, content-neutral rules to prevent disruption.
- **Monitor HB 2146 and SB 1150** for enactment, and be prepared to revise agenda-amendment procedures if the majority-vote exception is narrowed or eliminated.
- **Sunshine Act Training** for current and incoming board members to ensure thorough understanding of all applicable requirements under the act.

For questions about Sunshine Act compliance or to discuss whether your organization may be subject to the act, please contact:

Deborah J. Enea

Deborah.Enea@troutman.com

Troutman Pepper Locke LLP

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**Cindy Yan, a 2026 summer associate with Troutman Pepper Locke who is not admitted to practice law in any jurisdiction, also contributed to this article.*

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