

**Draft State Public Participation Act:
An Amendment to the State Administrative Procedure Act
And Government in the Sunshine Act**

Produced by the Working Group on Legal Frameworks for Public Participation

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Comment: Some states include municipalities as agencies subject to the Administrative Procedure Act. Others do not. The model would need to be adapted to each state's context. In each state, the Act should incorporate by reference that state's statutory definition of state agency or municipal authority (city, town, county, water district, etc.).

Whereas, knowledge and talent are widely dispersed in society, and all benefit when those skills and abilities are directed toward common goals, and

Whereas, public agencies and municipal authorities may collaborate with the general public and state, regional, and local government agencies, tribes, nonprofit organizations, businesses, and other nongovernmental stakeholders to accomplish public work and deliver public services more efficiently and effectively,

Whereas, existing statutory requirements place limits on the interaction between elected public boards and commissions and members of the general public, and

Whereas, there have been dramatic changes in the technology allowing for greater transparency of government both through broadcast media and the Internet, and

Whereas, public participation and collaboration enhance the Government's effectiveness, expand its range of options, improve the quality of its decisions, and enlist the problem-solving capacities of the general public and organizations outside Government,

Now therefore, the [state] Administrative Procedure Act and Government in the Sunshine Act shall be amended as follows:

Now therefore, the state of ____ enacts the following Public Participation Act:

Section One: Public Policy

It is the policy of this state to encourage public agencies and municipal authorities to provide broad, inclusive, deliberative, participatory and meaningful public participation in the policy process with the general public and stakeholders from the public, private, and nonprofit sectors, including state, regional, and local government agencies, tribes, nonprofit organizations, businesses, and other nongovernmental stakeholders. This act should be construed broadly to promote the fullest opportunity permitted by law to

participate meaningfully in governance and the policy process and to provide their Government with the benefits of their collective expertise and information.

Comment: This section establishes that this is a remedial statute to be construed broadly.

Section Two: Definition of Public Participation

For all purposes under this code,

- a) “Public participation,” “public comment,” or “public hearing” include, but are not limited to, any form of in-person, technology-aided, or online public engagement that provides for individual or small group discussion, dialogue, or deliberation among participants.
- b) “Policy process” means any action in developing, implementing, or enforcing public policy, including but not limited to identifying and defining a public policy issue, defining the options for a new policy framework, expanding the range of options, identifying approaches for addressing an issue, setting priorities among approaches, selecting from among the priorities, implementing solutions, rulemaking, project management, and assessing the impacts of decisions.

Comment: This section is intended to define these terms for all purposes under a state’s statutory code. The intent is to broaden the statutory definition so as to explicitly authorize innovation. Most states use these terms repeatedly across the code, not only in the Administrative Procedure Act, but also in statutes involving land use and transportation planning, the environment, utilities regulation, etc.

Section Three: Commitment to Agency or Municipal Authority Discretion

Each agency and municipal authority shall develop a policy on public participation that will allow broad, inclusive, deliberative, participatory and meaningful public engagement in the policy process. The choice of a particular form or model of public participation or sequence of opportunities for the public to participate is committed to agency or municipal authority discretion and not subject to judicial review, provided the agency or municipal authority provides some form of public participation, hearing, or comment as required by law.

Comment: This section is intended to shield agencies and municipal authorities from litigation over the choice of process model, for example, deliberative polling, deliberative town hall meeting, blog, etc.

Section Four: Public Engagement Specialist

The head of each agency or municipal authority shall designate a staff person to be the public engagement specialist of the agency. This designation may be a collateral duty appointment. The public engagement specialist shall be responsible for the

implementation of the public engagement policy and other provisions of this act. Each agency or municipal authority shall provide for training on a regular basis for the public engagement specialist of the agency and other employees involved in implementing the public engagement policy of the agency. The public engagement specialist shall periodically recommend to the agency head agency employees who would benefit from similar training.

Comment: This section locates responsibility for public engagement expertise within an agency or municipal authority. The public engagement specialist can obtain training and expertise that he or she can share with other employees in the agency or municipal authority through in house continuing education. This pyramid structure for disseminating training is cost effective.

Section Five: Collaboration

Public agencies and municipal authorities may enter into cooperative arrangements including but not limited to memoranda of understandings or contracts, to collaborate in carrying out any of their general powers and duties under state law.

Comment: This section allows agencies and municipal authorities to collaborate with the public on anything that they could do independently.

Section Six: Public Participation Meetings

a) Public agencies, boards and commissions may conduct meetings for the sole purpose of public participation provided these meetings are 1) open to the general public; 2) a notice stating in general terms the subject matter of the meeting is published at least three (3) days in advance; and 3) the actual meeting is live-streamed or broadcast through public access media. Members of public agencies, boards, or commissions, including a quorum, may attend these meetings and interact with the public, including responding to issues and ideas not encompassed within the original agenda, provided these issues or ideas originate with the public. Members of public agencies, boards, or commissions, including a quorum, shall not engage in substantive deliberation or take action at a public participation meeting.

b) Public agencies may consider and make use of information from Public Participation Meetings in a subsequent public meeting at which they take official action, provided that records of the general content of the Public Participation Meeting are made public within three (3) days after the meeting, and are public for a period of at least fourteen (14) days prior to agency action.

Comment: This section carves out an exception to the Sunshine Act to permit public officials to attend public participation meetings and engage in participatory discussion, deliberation, or dialogue with members of the public that may inform their later participation and action on public business.