

## Adding Motions to the Posted Agenda is Once Again Permitted by the Sunshine Act



**November 26, 2025**

*Pittsburgh, PA*

*Public Sector Alert*

(by **Max Junker** and **Alex Giorgetti**)

As Pennsylvania local governments are no doubt well aware, on June 30, 2021, the General Assembly enacted Act 65 of 2021, which amended the Pennsylvania Sunshine Act, 65 Pa.C.S. §§701-716, (Sunshine Act) to require that agencies make their meeting agendas available to the public, and set restrictions on taking official action on any item not listed on the published agenda. The Sunshine Act requires that agencies provide citizens with notice of, and access to, all meeting agendas at which official action and deliberations by a quorum will occur at least 24 hours in advance. The agenda must be posted at the municipal building and on the municipality's website. There is a process to amend the posted agenda at the meeting, but the Commonwealth Court ruled that the Sunshine Act only permitted such revisions in limited circumstances for emergencies or actions which did not require the expenditure of funds or a contract. On November 24, 2025, the Supreme Court overruled that decision and reinstated the process for amending an agenda for any reason.

### **Four Exceptions to the Prohibition on Official Action Not Included on Posted Agenda**

The legislature included four exceptions to the requirement that items be listed on the agenda before a board can take public action. First, Section 712.1(b) permits the agency to take official action on matters not included in the agenda if they relate to a real or potential emergency involving a clear and present danger to life or property.

Second, Section 712.1(c) permits official action on a matter brought to the attention of the agency within the 24-hour period prior to the meeting, provided the matter is de minimis in nature and does not involve the expenditure of funds or entering into any contract or agreement.

Third, Section 712.1(d) permits business raised by a resident or taxpayer at the meeting to be considered for the purposes of referring it to staff, researching it for inclusion at a later meeting, or for full consideration where it is de minimis and does not involve the expenditure of funds or entering into any contract or agreement.

The fourth and final exception in Section 712.1(e) allows an agency to amend the agenda at the meeting in question. Subsection (e) states that upon a majority vote of the individuals present and voting during the meeting, the agency may add a matter of agency business to the agenda. The agency must announce the reasons for changing the agenda before voting to make those changes. If the vote passes, the agency may then take official action on that matter. If an agency amends its agenda in this manner, it must post the amended agenda on its website no later than the following business day and include the details of the matter added, the vote, and the reasons for the addition in its meeting minutes. Meeting minutes are required to be kept by Section 706 of the Sunshine Act.

### **The Commonwealth Court Limits the Exceptions**

After these four exceptions went into effect with the 2021 amendment, the Commonwealth Court held that Subsection (e) could not be used on its own to amend the agenda at the meeting in question. It could only be utilized in relation to a matter falling under one of the other three exceptions.

However, on November 24, 2025, the Pennsylvania Supreme Court overruled the Commonwealth Court in *Coleman v. Parkland School District* and found that Section 712.1 of the Sunshine Act unambiguously creates four

freestanding exceptions to the general prohibition that an agency cannot take official action on items not listed on the meeting agenda pursuant to the 24-hour notice rule. This includes the majority vote exception as provided by the fourth and final exception in Section 712.1(e). The Supreme Court rejected the Commonwealth Court's interpretation of Section 712.1(e) and held that "the Commonwealth Court essentially redrafted Section 712.1 to align it with a textually unsustainable view of the ostensible spirit of the Sunshine Act and its 2021 amendment."

### **Impact and Considerations**

The Pennsylvania Supreme Court's ruling reinstates the majority vote exception and permits agencies, if they wish, to vote to add matters to the official meeting agenda and then take action on those newly-added agenda items at that public meeting. The ruling also reaffirms the validity of all four exceptions. The reinstatement of this exception in particular will allow for greater efficiency in municipal operations and save money and time on additional advertisements and meetings. However, agencies will need to comply with the specific requirements of Section 712.1 if and when voting to add items to the meeting agenda. And because the Sunshine Act requires an agency to provide an opportunity for public comment before official action is taken, an agency voting to add items to the meeting agenda should allow for public comment as part of the process.

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