

1 STATE OF FLORIDA
2 COMMISSION ON OPEN GOVERNMENT
3
4
5 IN RE: POTENTIAL REFORMS TO
6 FLORIDA'S PUBLIC RECORDS AND
7 SUNSHINE LAWS.

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10 VOLUME IV
11 AUGUST 27, 2008
12 1:00 p.m. - 3:35 p.m.

13
14 The Capitol - 212 Knott Building
15 400 South Monroe Street
16 Tallahassee, Florida 32399

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18 Reported by:
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FOR THE RECORD REPORTING TALLAHASSEE, FLORIDA 850.222.5491

1 P R E S E N T

2 BARBARA PETERSON, Chairman
3 President of the First Amendment Foundation

4 JOHN CARASSAS, Vice Chair
5 Pinellas County, Sixth Judicial Circuit, County Judge

6 PAULA DOCKERY
7 Senator, Lakeland

8 TALBOT "SANDY" D'ALEMBERTE
9 Florida State University, College of Law

10 JOANN CARRIN
11 Director, Office of Open Government

12 JEANNE GRINSTEAD
13 Deputy Managing Editor, St. Petersburg Times
14 President, Florida Society of Newspaper Editors

15 RENEE LEE
16 Attorney, Hillsborough County

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1 P R O C E E D I N G S

2 MS. PETERSON: If we can get started again, I
3 expect that we'll see Senator Dockery here in a few
4 minutes. And I hate to ruin our record here as
5 we've been flying through this stuff. I want --

6 One point I want to make, and I will remind
7 Senator Dockery this when she gets in, after our
8 discussion of the economic development agencies,
9 Judge Carassas wanted to know what the law was in
10 other states relating to economic development
11 agencies. So I sent an email to the National
12 Freedom of Information Coalition asking them if
13 they have any information, and, in fact, they have
14 a paper on how other states deal with economic
15 development issues and the various state laws and
16 exemptions. They have sent me that as an
17 attachment. And when I get back to my office I
18 will send it to JoAnn, and JoAnn will make it
19 available to the members of the Commission, as well

20 as anybody else who might want it. So that will
21 give us a big leg up, I think, in dealing with this
22 issue.

23 Next on our agenda -- we have just zipped
24 through this -- we have Public Participation. That
25 is Tab 25. As you might remember, we had some

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1 astounding and overwhelming testimony at our
2 Tallahassee meeting from a number of people,
3 citizens, who had felt that they had been shut out
4 of the process by local policies that did not allow
5 the public the opportunity to speak or participate
6 at a meaningful level in public meetings subject to
7 Florida Sunshine Law. And this is not unique. It
8 was not isolated to just the Tallahassee meeting.
9 We had testimony from citizens all around the state
10 about this. And it is, in my experience at the
11 First Amendment Foundation, one of the number one
12 complaints from citizens.

13 And we had legislation that was introduced in
14 2008. It was House Bill 991. And it had a senate
15 companion. I'm sorry; I don't have that bill
16 number. House Bill 991 had some issues, some
17 constitutional issues, so I took a stab at
18 rewriting it, what was basically 991. It's
19 under -- my rewrite is under Tab 25. The intent of

20 this is to give citizens an opportunity to speak,
21 not to give them necessarily a platform, but to
22 give them the opportunity to both respond to issues
23 before their elected or appointed officials and to
24 bring issues before those officials. And it -- I
25 should say this is a little confusing. This is the

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1 language of 991. The underlined provisions are my
2 changes, so any editorial change -- for example, on
3 the first page, "Individuals appearing before the
4 governing body," I struck "may." "But shall not be
5 required to -- " The editorial changes, the
6 strike-throughs or the underlining, are my changes
7 to the text of House Bill 991. Does that make
8 sense to everyone? So this is all new language.

9 It's not in current law. And it would allow
10 citizens to a certain period of time to bring
11 issues, non-agenda'd items, before their elected or
12 appointed officials and then give them the
13 opportunity to address issues on the agenda.

14 And so the recommendation is that we adopt or
15 endorse the legislation that would require all
16 agencies to allow for some level of public
17 participation at meetings subject to the Sunshine
18 Law. This was an issue, if you might remember, in
19 the City of Jacksonville. Jacksonville did adopt

20 an ordinance that may be one of the most
21 progressive. I'm not sure it's in this notebook.
22 It was in a previous notebook. So I think that
23 there is strong support among citizens for this
24 legislation, and I think it will go a long way in
25 addressing many of the concerns we heard from

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1 citizens about the lack of opportunity to speak.

2 Any questions? Comments? Discussion?

3 MR. D'ALEMBERTE: Barbara, this draft that's

4 in Tab 25, the strike-throughs are not from

5 existing language?

6 MS. PETERSON: None of this is existing

7 language. What I did -- and that's why it's a

8 little confusing. What I did was take the language

9 of 991 -- I can't remember whether it passed the

10 House.

11 MS. CARRIN: It passed the House.

12 MS. PETERSON: It did not pass the Senate. I

13 took the language from 991 and what -- the

14 strike-throughs and the underlines are my changes

15 to the text of 991. But it is all new language.

16 MR. D'ALEMBERTE: So my question relates to

17 some of the strike-throughs, and let me see if I

18 can get a reference for you. Page four, that last

19 sentence, the three strike-throughs on that last

20 page worry me a little bit.

21 MS. PETERSON: "The presiding officer may rule

22 an individual out of order."

23 MR. D'ALEMBERTE: Yeah.

24 MS. PETERSON: The reason -- and that

25 language, that exact phrase, is in almost every

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1 provision. And the concern I had there is many of
2 our citizens are not -- for example, those people
3 who came to speak in Taylor County. Their
4 complaint was that they are being ruled out of
5 order all the time. So if we give the presiding
6 officer the authority to rule an individual out of
7 order if he begins to repeat himself, he may be
8 simply trying to rearticulate or better articulate
9 something, or present material that's already been
10 presented by other speakers. How does the
11 presiding officer know I'm about to present the
12 same material? But I might have a different take
13 on it. And it concerned me that the language was a
14 little too restrictive.

15 We have a time limit on these people, and it
16 allows for time limits. And we could have told
17 those people from Taylor County, There's 12 of you
18 who have already said the same thing, but they each
19 want the opportunity to say it themselves. And if

20 we're restricting them in terms of time -- we're
21 giving them 15 minutes, and there are 15 of them,
22 they all get one minute -- I don't think it's too
23 much of a burden on our elected and appointed
24 officials to hear 15 people say the same thing, if
25 we're only taking 15 minutes.

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1 MR. D'ALEMBERTE: I think that's right. And
2 so there is authority here now to limit it to 15
3 minutes?

4 MS. PETERSON: It's a minimum. They have to
5 provide a minimum of 15 minutes. So they can say,
6 Okay, we're going to give 15 minutes -- sort of
7 like what we did in our meetings. We didn't have
8 the issue, but we gave everybody the opportunity to
9 speak for five minutes, and if there were people
10 left over, we had a half hour. If there were 30 of
11 them, they all got one minute. If there were ten
12 of them, they each got three minutes.

13 MR. D'ALEMBERTE: I just want to make sure we
14 maintain the authority to conclude a meeting. The
15 filibuster aspect to this really concerns me. And
16 I want to make sure that somewhere, there are
17 enough assurances that people can't go in and just
18 jam up proceedings.

19 I don't know whether that ever happens Renee,

20 but --

21 MS. LEE: Well, I'm sitting down here,

22 actually, Sandy and Chair, I'm kind of -- I don't

23 know how I feel about this. I wanted to go back to

24 the executive order and look at our mission, too.

25 Because we are creating a new area here. You know,

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1 citizens are allowed to attend, under the Sunshine
2 Law, but not necessarily allowed to participate in
3 meetings. And those meetings that the Legislature
4 has found that it's necessary for them to
5 participate have been written into law, such as,
6 you know, land use meetings, budget meetings.
7 There are other kinds that I can't think of right
8 now, environmental kinds of things, but this is
9 opening up every meeting of the governing body to
10 have some public input, whether relevant or not to
11 the subject matter. And I think some of these
12 meetings just are not conducive to that.

13 MS. PETERSON: You're answer to the executive
14 order, yes. The current policies regarding the
15 public's right to participate in agency meeting
16 subject to the Sunshine Law, including but not
17 limited to, speak at meetings. So yes, that's part
18 of our direct order.

19 And again, this is legislation that I would

20 presume will be filed again. The Legislature --
21 the House did, I believe, the House passed it. I
22 don't believe the Senate passed it. And what I did
23 was go in and just try to clean it up a little bit.
24 For example, citizen participation. This is not my
25 language. This is the bill as it was filed. But

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1 it allowed a citizen who didn't have the
2 opportunity to be heard at one meeting to be heard
3 at future meetings. And I'm thinking, Well, you
4 could have a citizen that wants to be heard at
5 every future meeting, so that's why I changed
6 "future" to "next regularly scheduled meeting." So
7 if they didn't get the one shot, they'd have the
8 opportunity at a second shot. And then -- I'm
9 sorry; these pages aren't numbered -- page three,
10 subparagraph two. "The individual making the
11 request and the staff of the governing body," it
12 said "shall be granted all the time necessary to
13 make the presentation." Well -- and Renee has
14 probably had this experience -- we could have
15 people taking all the time necessary for hours. So
16 again, I put a time limit in there.

17 So I did try to clean it up some, but to
18 answer your question, it is a direct charge of the
19 Commission to address this issue. We had the

20 language filed last year, and all I tried to do was

21 clean it up a little bit. Any other questions or

22 discussion?

23 MR. D'ALEMBERTE: That paragraph you pointed

24 us to, "The individual making the request and the

25 staff of the governing body shall be granted no

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1 less than 15 minutes."

2 MS. PETERSON: This is when a citizen submits
3 a request in writing to appear on the agenda. He
4 has to file the request at least two weeks in
5 advance. He has to state the nature of the item
6 and then request that the item be placed on the
7 agenda. So this is not where somebody just comes
8 to a meeting and we give them -- this is where they
9 actually -- and that was, Renee, one of the
10 frustrations that we heard, was that people could
11 not get -- they were not allowed to bring issues to
12 their, or before their, elected officials or to get
13 an issue on the agenda. And that was what this --
14 and, I mean, again, this legislation, I don't know
15 if it was filed in response, but it's sort of a
16 recurring theme around the state.

17 Senator Dockery?

18 SENATOR DOCKERY: Yeah, a question. I don't
19 know if local government works the same way, but in

20 the Senate, for instance, if we agenda a meeting
21 from 3:00 to 5:00, we have to stop at 5:00. So if
22 you're in the middle of a vote, if you've got ten
23 more people who want to speak, you can't extend.
24 Is that different?
25 MS. LEE: Yeah, we go until business is

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1 finished.

2 SENATOR DOCKERY: Okay. Well then, here is my
3 concern: I don't mind at all, in fact, I love the
4 concept of, if somebody writes two weeks in
5 advance, asks to be on a agenda, can have 15
6 minutes. But if you don't put some kind of a limit
7 on that, then what if there is a really hot issue
8 and 100 people all request 15 minutes to speak at
9 that meeting? So it seems to me that there should
10 be some opportunity for the local government to
11 say, Our time is filled for this next one, but
12 we'll get you on the one after or --

13 MS. PETERSON: It does say that.

14 SENATOR DOCKERY: Okay.

15 MS. PETERSON: There is a provision in here
16 that says if we can't accommodate you, then we'll
17 accommodate you at the next regularly scheduled
18 meeting. And that's where I changed it from
19 "future meetings" to "the next regularly scheduled

20 meeting." And I will say that --

21 SENATOR DOCKERY: Because there is some

22 ability for mischief there, in terms of delaying

23 votes or what not.

24 MS. PETERSON: And that's what I tried to

25 address, because I am aware of the opportunity. So

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1 what I tried very hard to do is take the text of
2 991 and adjust it so we could allow, sort of,
3 balance the interests here, allow for the
4 opportunity to -- try to preclude the opportunity
5 for mischief. There's always opportunity for some
6 mischief, but I did try very hard. Because I
7 understand the practical realities of conducting
8 meetings and still trying to allow the public -- so
9 I think there is a provision in here that says the
10 governing body must allocate, at a minimum, 15
11 minutes at the beginning of each meeting for
12 citizens who wish to appear, to make a request of
13 the governing body. "The presiding officer shall
14 divide the allotted time equally among all those
15 who have registered to speak, but in no case may a
16 citizen be allotted less than three minutes to
17 speak." So then, if they -- if we had too many
18 people, "the items shall be rescheduled by the
19 presiding officer for the next regularly scheduled

20 meeting."

21 MR. D'ALEMBERTE: I'm worried about this one.

22 In concept, I really would like to have us do

23 something in this area. I'm not comfortable today

24 with the language. I'm just -- the whole docket

25 management problem that --

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1 MS. PETERSON: And we're -- this is -- again,
2 we're not tied to this. This was the legislation
3 that was considered last year. As I said, I tried
4 to clean it up a little bit, because I thought it
5 was a little heavy on -- it was too much of a
6 burden for local government. But we're not tied to
7 that. We're not tied to that. What the
8 recommendation is that we have some requirement
9 that agencies allow for public participation at
10 meetings subject to the Sunshine Law. The examples
11 were House Bill 991.

12 Renee?

13 MS. LEE: I would like to recommend something
14 like the aspirational language we adopted earlier
15 with access to emails. And maybe make the
16 statement in our report that we encourage every
17 agency to enhance the opportunity for public
18 participation in their meetings. But I just don't
19 like the idea of the public hijacking meetings with

20 their own issues, just opening the door to anything
21 happening there. These are generally business
22 meetings. Those meetings that require the public
23 participation are already codified and in law, so
24 this is something that I think is just unwieldy for
25 local government, especially, to deal with.

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1 We do -- let me just describe the agenda for
2 the Board of County Commissioners' Meetings. There
3 is 40, 45 minutes set aside at the very top of the
4 meeting for citizens' input. They have three
5 minutes to come in and talk about anything on the
6 agenda. If we get past the 45 minutes of citizens'
7 input, then if there are people remaining who wish
8 to speak, the floor is open at the end of the
9 meeting to bring any issues forward. And they are
10 given a 3-minute limitation. And that process has
11 been available to the citizen in almost every
12 jurisdiction I've worked in: Jacksonville, Broward,
13 Sarasota, Charlotte.

14 MS. PETERSON: I think, though, the problem
15 may be, Renee, at the smaller counties. I mean,
16 certainly that wasn't the experience of the people
17 at Taylor County. It hasn't been the experience of
18 the people in Clay County. I think it is perhaps
19 city by city. And what I would -- my personal

20 feeling is that we need to have agencies adopt
21 policies, and it shouldn't be aspirational in our
22 recommendation, whether we say, okay we want them
23 to adopt policies and we can develop a model
24 policy, or, you know, whether it's adopting a
25 policy requiring amending the law.

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1 I'm not tied to this language, but I am very
2 much -- I took very much to heart what the people
3 have said to us over these months. And I think we
4 do need to either amend the law to adopt, and
5 require people and agencies to adopt, policies to
6 allow for some level of public participation, or
7 actually amend the Sunshine Law to that extent.
8 But my personal opinion is that it should not be
9 aspirational. It should be a requirement.

10 MS. LEE: Well, I like the idea, but I don't
11 like the using this as a springboard.

12 MS. PETERSON: And we don't have to. We can
13 work on our own language and come up with an
14 alternative. We're not tied to this. I just took
15 what was there and worked on it.

16 We can get -- maybe, JoAnn, you can resubmit
17 the Jacksonville City policy to us, and we can look
18 at that, too? And I'm not tied to this language.
19 In fact, that's why I tried to fix it.

20 Senator?

21 SENATOR DOCKERY: Madam Chair, I would

22 suggest -- I agree with Sandy, that it's the

23 specifics that have me bogged down, and that we

24 don't know exactly how each different local

25 government structures their meetings. So I would

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1 be supportive of something that was very generic,
2 but not aspirational, where it gives direction.
3 And something as simple as, at every meeting, 30
4 minutes shall be placed on the agenda for comment,
5 and then leave it up to them whether it's at the
6 beginning or the middle --

7 MS. PETERSON: Can I make a comment? That was
8 the policy in Clay County, and none of the
9 commissioners came for that 30-minute public
10 comment period, and it was not part of the
11 televised meeting. So they got to come and speak
12 to each other. And you know --

13 SENATOR DOCKERY: Well, it has to be written
14 in there "with a quorum."

15 MS. PETERSON: One other point:
16 Representative Weatherford cosponsored this
17 legislation last year. And maybe we can take the
18 two and meld them together and make a
19 recommendation that we amend the law to require

20 agencies to adopt policies that would enhance --
21 and just make it more generic. Allow the agencies
22 to develop their policies, again, with perhaps
23 direction and guidance from the Office of Open
24 Government. And then not -- and then we could --
25 because I had some -- there were some real

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1 constitutional issue I had in 991, and we had some
2 problems with it. But if we make it looser and not
3 specific language, perhaps that would better serve
4 us all. And then -- because it sounds like you've
5 already got something in place that works, and we
6 could go from there.

7 MR. D'ALEMBERTE: I'd make that motion.

8 MS. PETERSON: Okay.

9 SENATOR DOCKERY: Second.

10 MS. CARRIN: Carassas?

11 JUDGE CARASSAS: Yes.

12 MS. CARRIN: D'Alemberte?

13 MR. D'ALEMBERTE: Yes.

14 MS. CARRIN: Dockery?

15 SENATOR DOCKERY: Yes.

16 MS. CARRIN: Grinstead?

17 MS. GRINSTEAD: Yes.

18 MS. CARRIN: Lee?

19 MS. LEE: Yes.

20 MS. CARRIN: Peterson?

21 MS. PETERSON: Yes.

22 So, "Amend the law to require agencies to

23 adopt policies."

24 MR. D'ALEMBERTE: Yeah. "Policies allowing

25 reasonable opportunity."

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1 MS. PETERSON: "Allowing reasonable
2 opportunity."

3 MR. D'ALEMBERTE: "For public participation
4 and comment."

5 MS. PETERSON: "For public participation and
6 comment at meetings subject to --"

7 SENATOR DOCKERY: Madam Chair, when you say
8 "agencies," is there a statutory definition for
9 what that is?

10 MS. PETERSON: Yes, ma'am. The definition is
11 in Chapter 119. But the courts, in interpreting
12 the Sunshine Law, use the definition in chapter
13 119.

14 Okay. This one, Education and Training. I
15 think that was like the recurring theme, the
16 opportunity for education and training. I will say
17 that after our, the First Amendment Foundation's,
18 audit of the state agencies last year, the Governor
19 asked JoAnn to start some sort of educational

20 opportunity for state agency employees. And so she
21 worked with the First Amendment Foundation and we
22 did four or five --

23 MS. CARRIN: Five.

24 MS. PETERSON: Five 2-two hour sessions for
25 government employees. We had the opportunity for

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1 200 employees at each of those five, and we were at
2 capacity each time. We did them at the R. A. Gray
3 Building. Because of budget constraints, we
4 couldn't move them around, although we had many,
5 many, many requests. So what my board at the First
6 Amendment Foundation agreed to do -- we do a series
7 of fall seminars of public records, open government
8 seminars. We go all around the state. And my
9 board agreed to allow any government employee who
10 registers through the Office of Open Government to
11 attend those seminars at the reduced,
12 bargain-basement rate of \$10. The normal rate is
13 \$25 for nonmembers. So we're hoping -- we're doing
14 Jacksonville, Ocala, Miami, and Sarasota in the
15 month of October; there will be more in the
16 Panhandle in, probably in January. So we're trying
17 to get out there.

18 But this would be a recommendation that we
19 actually require some level of education and

20 training on the requirements of the Open Government
21 laws. There were -- that was the recommendation
22 made to us. All government employees -- I slipped
23 in the alternative recommendation that would
24 require all elected and appointed government
25 officials to undergo some level of education and

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1 training on the requirements of Open Government
2 laws. This is -- I think, as we discussed at one
3 of the other meetings, more and more and more
4 states are now requiring some level of Open
5 Government training, at least the higher level.
6 The problem is that, as we have found through the
7 audit, it's not necessarily the upper-level people
8 who need the training. It is the front desk
9 people, the person who answers the phone, who need
10 the training. So those -- that was the
11 recommendation: require all government employees.

12 Again, we don't have to specify what training,
13 what program. Many of the professionals, like the
14 City Clerk Association, the county clerks, many of
15 these organizations now require some level of
16 training and a certificate program. It's like, for
17 us, CLE credits. So they have to get a certain
18 amount of training already. So I'm not sure we
19 would be changing too much what's already being

20 done, except to require, but not specify a
21 particular program. And then, as I said, as we
22 enhance the Office of Open Government, more of
23 those training opportunities will become available.
24 And I think the Office has already done something
25 with the Institute of Government on this?

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1 MS. CARRIN: The Florida Institute of
2 Government at FSU; last year we entered into a
3 partnership with them, and they give us 500 free
4 training slots -- it's an on-line program -- and
5 then there were an additional 500 slots that were
6 actually purchased by the state agencies. And then
7 the program that Barbara and I started this last
8 spring, we have another session scheduled for
9 September, and we plan to continue to do those
10 sessions routinely, as we can. So, you know,
11 there's several programs out there. I think that
12 different options accommodate the needs of
13 different agencies.

14 MS. PETERSON: Any questions or comments?
15 Renee?

16 MS. LEE: I think I like the alternative
17 better than the first part of this. And that's
18 because the first part says "Require all government
19 employees." All government employees means the

20 employee who's out there digging a trench; somebody
21 who's operating a back hoe, a piece of equipment;
22 the secretary at the front desk; you know, the
23 commissioner's assistant. So it goes every
24 employee. That could be unmanageable, to some
25 extent. Although, we're trying to do it in

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1 Hillsborough County. We've got an on-line training
2 program for public records. Now, I don't know that
3 every employee, although we expose them to Sunshine
4 Laws -- but the 286 laws, they are not really
5 meeting as a board anywhere. And, you know, that
6 area of law can be sophisticated in some sense.
7 And not that they couldn't understand it, but I
8 think it is the responsibility of every elected and
9 appointed official, and elected officials
10 especially who sit on the board, to understand the
11 Sunshine Law and all of it's nuances -- when they
12 can talk to each other, the whole text messages,
13 the computer messages, phone calls -- I think it's
14 important that they understand that. So I like
15 requiring the elected officials and appointed
16 officials doing that, but all employees concern me
17 a little bit.

18 MS. PETERSON: We can tweak the first one. As
19 I said, that was the recommendation made to us, to

20 be all government employees. We can qualify it.

21 MS. LEE: Or "appropriate."

22 MS. PETERSON: Or "appropriate." We can

23 qualify it in some way if we like the idea of the

24 broader education program. And then the "elected

25 and appointed," we might want to change "government

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1 officials," because we have private citizens who
2 are appointed to some kind of community board, who
3 are subject to the Sunshine, and they need to know
4 what they're getting into, as much to protect the
5 county from the liability of the Sunshine lawsuit
6 as anything else. So either one of these. Again,
7 we can modify "all employees," we can qualify it,
8 limit it, or we can go with the second.

9 Any other comments or feelings about it?

10 MR. D'ALEMBERTE: Renee, was there a motion?

11 MS. LEE: I would move that we require all
12 elected and appointed government officials to
13 undergo education and training under the
14 requirement of Florida's Open Government Law, and
15 encourage all -- some kind of training for all
16 government employees regarding the Sunshine Law.

17 MS. PETERSON: Second?

18 MR. D'ALEMBERTE: Second.

19 MS. PETERSON: Okay.

20 MS. CARRIN: Carassas?

21 JUDGE CARASSAS: Yes.

22 MS. CARRIN: D'Alemberte?

23 MR. D'ALEMBERTE: Yes.

24 MS. CARRIN: Dockery?

25 SENATOR DOCKERY: Yes.

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1 MS. CARRIN: Grinstead?

2 MS. GRINSTEAD: Yes.

3 MS. CARRIN: Lee?

4 MS. LEE: Yes.

5 MS. CARRIN: Peterson?

6 MS. PETERSON: Yes.

7 So let me get my notes straight. "Require all

8 elected -- to undergo -- and encourage -- "

9 MS. LEE: "Training for all employees."

10 MS. PETERSON: "Encourage training -- "

11 MS. LEE: "Require elected officials and

12 appointed government officials -- "

13 MS. PETERSON: Okay. "Encourage training for

14 all government employees." Okay.

15 Next, we have Enforcement and Compliance.

16 Again, this was one of the big issues, and I think

17 the frustration for, not only those people who came

18 to testify to us, but for some of the members of

19 the Commission as well. And what -- we didn't have

20 any specific recommendations on this, just that we
21 had to enhance enforcement, we had to enhance
22 compliance.

23 Actually, we did have one specific
24 recommendation and that was that we recommend the
25 appointment of a special prosecutor to deal with

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1 only open government violations, sort of like an
2 Office of State-wide Prosecution, a prosecutor for
3 Open Government. And we did look -- I provided you
4 with information on what other states have done in
5 this area. For example, what I did -- I think we
6 had some discussion about the special prosecutor
7 issue at Fort Lauderdale. We were worried about
8 the economic impact about that, creating the new
9 office in these difficult times, that that might
10 not be workable at this point. So what I did was
11 go in and look at what some of the others states
12 have done.

13 And I also looked back a little bit to see
14 what Sandy had recommended when we did our
15 symposium -- I don't know if you remember; at the
16 Poynter Institute -- and we came out with the white
17 paper and the model law. So in Texas, for example,
18 any agency that wants to deny a public records
19 request must first seek the approval of the

20 Attorney General. So I want to deny Jeanne's
21 public records request. Before I do that, I have
22 to go to a government official and seek approval.
23 That would cut down significantly, I think, on much
24 of the litigation -- might -- and many of the
25 questions we have regarding public access. So

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1 whether it's the Office of Open Government, whether
2 it's the Office of the Attorney General, that is
3 one recommendation. In Delaware, I believe it
4 is -- there is another state; there are a number of
5 states that deal with these issues -- and a citizen
6 or a person denied the right, denied access to a
7 public record, has the right to appeal the denial
8 with the Attorney General or the Office of Open
9 Government. Some of these states have offices like
10 the Office of Open Government, so there is a right
11 of appeal. Or the agency has to first seek
12 permission in order to deny access. So we have
13 some higher level looking at the request and the
14 denial before it ever gets too far. That was one
15 of the issues.

16 Then the issue that I pulled out of our model
17 law was a provision that Sandy had recommended
18 years ago: to amend the penalty provision "To allow
19 an additional penalty to be assessed against an

20 agency if the court determines that the agency
21 violated the Sunshine and Public Records Law and
22 showed an intentional disregard for the public's
23 constitutional right of access. Or the court finds
24 a pattern of abuse of access requirements by the
25 agency, stipulating that those additional charges

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1 or penalties would be deposited -- " And again, I
2 just stuck it in the Office of Open Government "for
3 the purpose of enhancing access to public records."
4 So the severe penalty would go back to enhancing
5 public access.

6 SENATOR DOCKERY: Madam Chair or Sandy, how
7 would someone bring forth that complaint? Would
8 they have to hire an attorney? Would the Attorney
9 General's Office be assisting in that?

10 MR. D'ALEMBERTE: That's a good question
11 because it raises the issue of whether the Attorney
12 General ought to be authorized to play a role in
13 this. When we discussed it earlier, my
14 contemplation that, as an additional incentive for
15 agencies not to wantonly violate the law, that
16 there be some kind of penalty that would be
17 collected in private action. And private action,
18 historically, it's been brought by private
19 attorneys, usually for citizens, probably more

20 often by news media. The difficulty is that news
21 media quit bringing these actions. There's really
22 not the litigation that there was just a few years
23 ago. And it is my view that this litigation, with
24 the intent of attorney's fees -- one of the great
25 educational processes for government agencies, that

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1 they hate paying attorney's fees, particularly for
2 some of their attorneys. Paying Renee is one
3 thing, but Hillsborough County doesn't want to pay
4 me a fee. So I found government agencies very
5 sensitive to that. And I thought if they had to
6 pay some kind of special assessment if the court,
7 in addition to finding a violation of Sunshine Law,
8 found a pattern of abuse, then that would really
9 give incentive to people to clean up their act.
10 And that was the only thought.

11 But I did not go over the point that you're
12 now raising, which is whether the Attorney General
13 ought to be authorized to bring those actions. My
14 guess is they may be authorized today.

15 MS. PETERSON: I'm not sure. If I sued the
16 Department of State, for example, the Attorney
17 General would most likely be representing the
18 Department of State. The Attorney General is going
19 to be representing the state agency. I don't know

20 that they have current authority. I don't believe
21 they have current authority. A state attorney does
22 have the authority to take those, regardless of
23 whether it's a criminal violation or not. They
24 rarely do.

25 MR. D'ALEMBERTE: In fact, let's go beyond

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1 that. Have they ever?

2 MS. PETERSON: Yes, they have.

3 MR. D'ALEMBERTE: They have?

4 MS. PETERSON: Escambia County pays a state
5 attorney. There have been a couple of cases.

6 MR. D'ALEMBERTE: But noncriminal? I know in
7 Escambia County, there was a criminal prosecution,
8 but what I'm asking is whether the state attorney
9 has ever used a civil, their civil authority? And
10 I can't think of a single case. And I think
11 Escambia County, you're right, but it was a
12 criminal prosecution.

13 MS. PETERSON: And then we had the case in
14 Duval County where a state attorney called a grand
15 jury, the grand jury found a pattern of abuse, but
16 the state attorney said, I'm not going to file
17 charges because it's the city attorney's fault. So
18 under current law, if a citizen -- if anyone sues
19 an agency for violation of the Public Records Law

20 and wins, the court must award attorney's fees and
21 court costs. It's a little looser under the
22 Sunshine Law; language is a little looser under the
23 Sunshine Law. I would like to bring both of those
24 up to the same level, because we have -- the same
25 violation provisions in the Sunshine Law are very

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1 weirdly worded and technically only award the
2 citizens of the state, which is different from the
3 language in the Public Records Law.

4 Having said that, when we're cleaning up
5 everything, we'll clean up that, too. So if I sue
6 a government agency and I win for violation of a
7 Public Records Law, the court must award me my
8 attorney's fees and court costs. This would be a
9 separate provision. I would then ask the
10 prevailing plaintiff -- the prevailing party would
11 then have to show that they had an intentional
12 disregard for my constitutional rights, or say, in
13 the case of the City of Jacksonville, there was a
14 repeated pattern of abuse. And so I would have to
15 provide actual evidence of those two things and
16 then the court would have to make the judgment.
17 And then we would have an increased award, and that
18 award would not go to the prevailing party. It's
19 not damages. It would go back to an enhancement of

20 public access.

21 MR. D'ALEMBERTE: That was the concept. So

22 you're bringing an action for violation of Open

23 Meetings or Public Records Law. You're now asked,

24 as one of the respondents, through public records

25 request, Let me have the names of all people who've

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1 attended the seminar in Bradenton or other places
2 entitled "How to Avoid Compliance with the Sunshine
3 Law"; and provide me with all the records
4 maintained by any public employee relating to that
5 educational program; and provide me with any emails
6 or other correspondence that came from that that
7 led to the policy that now you've adopted that has
8 denied me access to this. It seems to me, at that
9 point, you've now just -- people have done that.
10 And now, just paid themselves into a fine for
11 deliberately avoiding, and almost conspiring, to
12 avoid Sunshine Laws. And there ought to be some
13 method --

14 MS. PETERSON: So we actually, under this one,
15 we have two recommendations: amend the law, and
16 again, I'm not necessarily stuck to "the seeking
17 the approval of," but to amend the law to allow
18 some opportunity for appeal or some opportunity to
19 question a denial, whether it's the agency being

20 required to seek approval before denying a public
21 records request or whether it's a right of a
22 citizen to appeal a denial to a public entity, but
23 some enhanced opportunity before we get to the
24 point of litigation.

25 MS. LEE: Madam Chair, there's something --

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1 and I can't put my finger on it, but there's
2 something that's bothering me about this. And
3 maybe if I talk it out, I can -- maybe you can help
4 me with it. We already are required -- if you
5 refuse to give someone public records, you are
6 required to state in writing what the exemption is.

7 MS. PETERSON: Only if you're requested by --

8 MS. LEE: No. If you refuse to give somebody
9 public records, you have to state under what
10 exemption that record falls.

11 MS. PETERSON: Keep talking and I'll find the
12 provision.

13 MS. LEE: Is that not -- okay.

14 MS. PETERSON: It's upon the request. You
15 don't have to put it in writing unless asked to do
16 so by the requester. I will find it. Keep
17 talking.

18 MS. LEE: We've been very generous in our
19 responses.

20 MS. PETERSON: Not that we would discourage

21 you from putting it in writing.

22 MS. LEE: Okay. Then if that is not a

23 requirement, then let me just rethink that.

24 Because I always felt that that was a requirement,

25 to state under which exception it falls that you

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1 are refusing to produce.

2 MS. PETERSON: You have to state --

3 119.07(1)(d) says "A person who has custody and

4 asserts that an exemption applies shall redact that

5 portion -- " (e) says that "If the person who has

6 custody contends that all or part of the record is

7 exempt, he or she shall state the basis of the

8 exemption -- " Excuse me. "The basis of the

9 exemption that he or she contends, including the

10 statutory citation." So you have to state it.

11 (f) says "If requested by the person seeking to

12 inspect or copy, the custodian of public record

13 shall state in writing -- " So you only have to

14 put it in writing if the requester asks for it in

15 writing.

16 MS. LEE: But you have to tell the person.

17 MS. PETERSON: Right. The burden is on you to

18 tell me why I can't have it.

19 MS. LEE: Right. Exactly. So we tell the

20 person. And let's play the scenario out. This is
21 the one that concerns me, is seeking the approval
22 of the Office of Open Government before denying a
23 request for public records. So if someone comes in
24 and asks for records and I say, No, this is an
25 exempt document, so then I have to call the Office

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1 of Open Government?

2 MS. PETERSON: Or the Attorney General,
3 whichever; right.

4 MS. LEE: Okay. But another agency. And tell
5 them what my exempt document says for them to make
6 a determination of whether or not I can produce
7 that document. I mean, it just seems to me we've
8 got a law here we're trying to manage, and people
9 who want documents -- there is already a procedure
10 in the law that says if you're refused a document
11 you think you're entitled to it, you get an
12 expedited hearing before the courts. You can go to
13 the court and right away, in four days or so, they
14 give you a hearing.

15 MS. PETERSON: I wish it was right away.

16 MS. LEE: It's pretty -- I mean, the newspaper
17 can push. They get --

18 MS. PETERSON: A newspaper can, but a citizen
19 doesn't necessarily have that same level of access.

20 I'm less concerned with the newspaper than I am

21 with the citizen.

22 MS. LEE: Okay. Well, but they have access as

23 well. And the court is very generous in opening

24 their doors when a citizen says I can't get

25 records. But it just seems -- are we going to

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1 somehow put one of these offices in place of the
2 courts? Are we going to require that the
3 governmental agency goes through Office of Open
4 Government or AG's Office and then to court? I
5 mean, is there -- what's a final resolution here?

6 MS. PETERSON: Well, that's still to be
7 determined. What I've done here is provide the
8 recommendation, and then how we word that
9 recommendation and exactly what we do is what we
10 will work out between now and October. What I've
11 done is go in and looked to see what others states
12 have done, and as I said, there are different
13 approaches. There's the Texas approach: Get the
14 approval of the Attorney General. That does
15 not protect you from litigation, because, I guess,
16 I could still disagree with the Attorney General.
17 But that's true today. You can go get an Attorney
18 General's opinion. That does not protect you from
19 a lawsuit, but it sure does help you in a lawsuit

20 if the Attorney General is on your side. So I
21 don't know how that would differ from the Attorney
22 General -- seeking an Attorney General opinion,
23 except that before you could deny a request for
24 access, you'd have to get either the Office of Open
25 Government or the Attorney General, whatever, if

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1 you decide to do this.

2 The other alternative or other approach is
3 where we give the citizen some opportunity to
4 appeal a denial and -- for example, the man I told
5 you I was working with before, who was trying to
6 get these emails and he's trying to be charged \$125
7 an hour. He has requested mediation through the
8 Attorney General's Mediation Program. The
9 government agency has refused. His only
10 alternative now is to sue them. What I'm trying to
11 figure out, and what I think we have to do, is
12 enhance the public's ability to get access, short
13 of suing government. And that's what these
14 different programs and policies and requirements in
15 other states -- so what I've done is look to see
16 what other states are doing to try to enhance the
17 public's ability to get access, short of
18 litigation. I hate that. I know Sandy thinks we
19 need more of it. But if we can help a citizen,

20 short of litigation, that's my goal.

21 MS. LEE: And I like the second aspect of

22 this, in terms of enhancing the penalty if, in

23 fact, there is a refusal to give public records

24 when a person is entitled to it. I certainly think

25 that the court should have the discretion to award

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1 additional damages if it determines that it's
2 intentional disregard or a pattern of abuse. I
3 certainly support that. But I'm a little concerned
4 about inserting another party in here and that
5 delays the production. I mean, I --

6 MS. PETERSON: Well, the rationale behind
7 inserting another party is to get sort of a neutral
8 third party to look at this. Sometimes it's just a
9 misinterpretation of an exemption. That happens
10 quite frequently. Sometimes the agency is
11 absolutely right, and it helps the agency for
12 someone else to tell the -- not always -- to tell
13 the citizen that, or the reporter, that the agency
14 is correct; this exemption applies. So --

15 MS. LEE: Is that -- so let's say that the
16 Office of Open Government will be our appointed
17 third party in this. A person comes in, a
18 newspaper comes in, on a rather timely issue. They
19 want records. We say some are exempt. They go to

20 the Office of Open Government. How long do they

21 have to turn around a decision to --

22 MS. PETERSON: Again, the details, we have

23 not -- we haven't -- we're not talking exact

24 language yet. And how we word this is what we will

25 discuss in October. You will -- these will be --

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1 the recommendations will be available, and then how
2 we word it is still open for discussion.

3 Jeanne, did you have a comment?

4 MS. GRINSTEAD: I just wanted to say I think
5 my preference here would be to put the emphasis on
6 the citizen. So I would be more interested in
7 wording it that you would give the citizen who has
8 been denied the access that opportunity to appeal.

9 MS. PETERSON: Okay. So any person who's been
10 denied access -- because it would be more than a
11 citizen -- but a person who's been denied access
12 has X number of days in which to appeal the
13 decision to either -- we'll figure that out --
14 Office of Open Government, the Attorney General --
15 so the opportunity to appeal a denial, rather than
16 the requirement that the agency seek approval
17 first. And that was, as I said, that was another
18 approach taken in -- I forget what state.

19 Any other questions? Sandy?

20 MR. D'ALEMBERTE: Yeah. I see why you go that
21 direction, but I do recognize that in that kind of
22 process, most citizens are not going to be able to
23 do that without access to counsel to really perfect
24 that appeal. So if you do that, there ought to be
25 some provision for attorney's fees in that appeal.

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1 Let me offer another approach, and that is don't
2 require -- don't set up an appeal, don't require
3 the government agency to do anything. But give
4 them a safe harbor, in the sense that if they --
5 before they deny a request, they seek advice of the
6 Office of the Open Government, let's say, and get
7 their concurrence. And evidence of that could be
8 introduced in any proceeding. And what that will
9 due, in effect, is set up an incentive. If local
10 government has any doubt about their position,
11 they'll go up to the Office of Open Government --
12 it could be Attorney General -- get their position
13 confirmed. If it's not confirmed, presumably by
14 the information -- if it is confirmed they've got a
15 document they can introduce into evidence in any
16 court proceedings brought. And it will be, in
17 practical terms, it will achieve the result you're
18 looking for, I think.

19 MS. GRINSTEAD: I think we're saying the same

20 thing really, because I wasn't saying that the
21 opportunity to appeal a denial -- I wasn't seeing
22 that as needing a lawyer to do that. It would be a
23 call to the Office of Open Government and, to me,
24 that's the step before having a hire an attorney.

25 MR. D'ALEMBERTE: Yeah. But see, if we put

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1 that incentive into the government agency, rather
2 than requiring the citizen to do it, then the
3 citizen is not going to be burdened by any
4 attorney's fee or costs. Because if you put it on
5 the citizen, I think you've got to provide the
6 citizen the resources to see that out. That's the
7 very reason we've got the attorney's fee provision
8 when you go to court. So I just feel uncomfortable
9 setting up an appeal, not only because I think it
10 complicates the processes of government officials
11 trying to come to terms with this, but it also
12 creates another step which would delay things for
13 citizens. So I like the idea of letting government
14 carry the burden of any result, but not requiring
15 them to do it, but give them an incentive to seek
16 that out. So that would be my alternative
17 approach.

18 MS. PETERSON: And I believe that that's, more
19 or less, the process in New York with the Office of

20 Open Government. Bob Freeman, who runs that
21 office, does not have quasi-AG authority but can
22 issue opinions about decisions to deny access to
23 public records.

24 Senator?

25 SENATOR DOCKERY: Let me understand. Is --

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1 Sandy, are you saying that the citizen would go to
2 the Office of Open Government or the AG's Office
3 before or after a denial?

4 MS. PETERSON: That's what's Jeanne is saying.

5 Sandy, do you want --

6 MR. D'ALEMBERTE: Yeah. What I would say is
7 the citizen goes to the government agency to try to
8 get the document. A government agency, before
9 denying, would have -- the government agency would
10 have the opportunity to go to the Office of Open
11 Government to get a confirming opinion. And by
12 doing it that way, the citizen doesn't have to do
13 any more than they have to do today, other than
14 making the request. And now it's up to government
15 to give an answer to that request. But if they do
16 go to Office of Open Government to get some
17 technical assistance in doing this, it would then
18 have the protection. Because I think it would be
19 substantial in litigation of having an opinion from

20 the Office of Open Government that they don't have

21 to provide the material.

22 MS. PETERSON: And presumably, that process

23 would be faster than seeking an official Attorney

24 General's opinion.

25 MR. D'ALEMBERTE: Faster than that, and faster

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1 than going to court.

2 MS. LEE: I'm not opposed to that. But what
3 if, instead of after the request is made, what if
4 the Office of Open Government was there for
5 citizens to come to be advised as to whether or not
6 the document that they're requesting is or is not a
7 valid request? And if the Office of Open
8 Government signs off on that and if the agency
9 doesn't abide by it, then it's the Office of Open
10 Government who will represent that citizen in
11 fighting them to get that.

12 MS. PETERSON: I believe that that,
13 unofficially, happens already, that people call
14 JoAnn saying I want this public record and she
15 helps. But the problem I think that Sandy is
16 trying to avoid is putting the burden on the
17 citizen to go seek advice or seek help, that the
18 burden should be on the agency. Because it's the
19 agency that is responsible for providing access

20 under the constitution.

21 SENATOR DOCKERY: And I appreciate that,

22 except it's still not -- there's no teeth to that.

23 As he said, it's more of an incentive.

24 MS. PETERSON: There's no teeth unless the

25 agency -- remember, we have two recommendations

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1 here. And there is still teeth if --

2 SENATOR DOCKERY: There's increased penalties.

3 MS. PETERSON: Well, there's penalties and

4 there's increased penalties. There would be

5 increased penalties only if there was a pattern of

6 abuse or an intentional disregard. But if the

7 agencies, for example, didn't go to the Office of

8 Open Government, didn't get that stamp of approval,

9 the citizen would still sue and would still get

10 attorney's fees and court costs. Even if, as

11 happens, the Office says, Yes, the exemption

12 applies, the citizen would still have an

13 opportunity to sue. And a court or judge could

14 conceivable say, We agree with the citizen, and

15 they would still be eligible for attorney's fees

16 and court costs.

17 SENATOR DOCKERY: I'm very supportive of the

18 objective. I'm just trying to find the simplest

19 way and the manner in which the citizen would have

20 the weight of an agency or an official behind them

21 and not be out on their own.

22 MS. PETERSON: And that, I think, is Jeanne's

23 idea, is that we would give them an opportunity to

24 go to an Office of Open Government and say, I think

25 that this agency has wrongfully denied my request

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1 for public records. That triggers a little
2 investigation by JoAnn. And then the letter is
3 written saying yes, the agency is right, or no, the
4 agency is wrong. So I'm not sure what the
5 consensus here would be. Requiring the agencies to
6 seek approval seems to be out the window, and now
7 it is a question of whether we -- and if there's --
8 I can draft both of them, and I can go find out
9 more about how, say Delaware, how they handle this
10 citizen issue. And then we can make a decision on
11 which one we want.

12 MR. D'ALEMBERTE: Barbara, I'm struck by
13 Senator Dockery's question and the response that
14 JoAnn really is doing this in an informal way now.
15 It would be interesting for you all to sit down and
16 think through a possibility of that informal
17 process becoming something that's very specifically
18 authorized in the statutes. I can see some
19 disadvantages to that, because, you know, other

20 agencies that you have to worry with. But on the
21 other hand, the Senator's point, if people could
22 informally get that weight without having to go
23 through what I see as an appeal process before
24 local government, it may not -- it may be they
25 could do that in a way that's not terribly complex

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1 and would not require counsel. I mean, if you're
2 not requiring people to go get counsel today, I
3 don't think --

4 MS. CARRIN: No, sir, not at all. The way it
5 operates now is citizens come to us. Often times,
6 agencies will call and ask questions. But most
7 often, the citizens come to us, then we intervene
8 on their behalf. And the Attorney General's Office
9 is also doing that. And I think that would be my
10 preference, to continue that, make it more known
11 that we're available to citizens, especially on a
12 local level, than to have every request that an
13 agency is going to deny have to come through our
14 office. Because, you know, there could be so many
15 of those that would be legitimate. The agency, in
16 some cases, would know the exemptions better than
17 we would, without a lot of investigation and work.
18 So I think the way it's working informally now is
19 very good. And it's a matter of citizens knowing

20 that they have a resource available. We are now
21 authorized to do that for state agencies. We're
22 not authorized to do it with local government
23 entities. We do it anyway, on behalf of citizens
24 who call.

25 MS. PETERSON: And we have the codification,

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1 perhaps expansion, of the Office of Open

2 Government.

3 Renee?

4 MS. LEE: Well, you know, maybe my question

5 would be untimely at this point, but I wanted to

6 understand the role of the Attorney General's

7 Office, with respect to the enforcement of the

8 Sunshine Laws, as it relates -- or that office

9 relates to the work of the Office of Open

10 Government.

11 MS. PETERSON: And we're going to talk a

12 little bit about that, but I can give you maybe a

13 shortish answer right now. The Office of Open

14 Government was created by executive order to

15 enhance access to public records, deal with open

16 government issues in those agencies under the

17 control in the executive office of government. So

18 we have a recommendation before us to codify the

19 Office of Open Government, to expand its reach and

20 scope.

21 The Attorney General's Office runs the Public

22 Records Mediation Program, so that -- and this was,

23 again, it was an informal program started by

24 Attorney General Butterworth. In 1995, it was

25 codified. I believe it's in Chapter 16. It is a

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1 program where a citizen can go to the Attorney
2 General's Office -- actually, either the citizen or
3 the agency; it doesn't matter. Any party to a
4 dispute over access to public records can go to the
5 Attorney General's Office and request mediation of
6 the dispute. The program is voluntary, which means
7 that if an agency declines to participate, the
8 citizen then has no recourse but to go to court.
9 Or vice versa. The citizen can refuse to
10 participate. It's voluntary and the results are
11 nonbinding.

12 MS. LEE: The reason I ask that is because
13 we've been struggling with an idea of who would
14 represent the citizens. And it seems to me that
15 we've got two agencies here, both doing somewhat
16 some of the same type of work.

17 MS. PETERSON: Somewhat same, but also
18 different.

19 MS. LEE: Okay. And the difference could be

20 that the Office of Open Government is more consumer
21 friendly and more public friendly and can represent
22 that citizen in instances where there's some
23 dispute over a governmental agency, and the
24 Attorney General is the office that really resolves
25 it, since already that power lies with them to do

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1 the mediation program.

2 MS. PETERSON: Yes. I think you're right.

3 They're not mutually exclusive. I think they work

4 very well together. And that -- there's going to

5 be a bigger discussion here about the Office of

6 Open Government, but the Attorney General's Office

7 is more involved in the mediation of disputes.

8 This would be an avenue for a citizen before they

9 ever got to mediation to perhaps resolve dispute,

10 which happens on a daily basis anyway already. And

11 what we would be doing is making it an official

12 thing.

13 The frustration is -- and you should talk to

14 this man that I've been talking to for weeks. When

15 an agency refuses mediation, then there's no other

16 avenue but litigation. And I tell you, I cannot

17 find this man an attorney who will represent him.

18 And his head is about ready to explode in

19 frustration. And I'm frustrated because I can't

20 help him, and I think he has a legitimate issue.
21 So this would be another avenue, a separate avenue,
22 less formal, even though the mediation program is
23 nonbinding. But the government has to agree to
24 mediation, and if they don't agree, a citizen has
25 no other alternative. So this would be another

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1 opportunity. And it gets to the point -- you know,
2 when Pat Gleason was in the Attorney General's
3 Office and an agency got a call from Pat, that was
4 pretty forceful. The agency didn't always agree.

5 And the Office of Open Government is filling that
6 role now. When they get a call saying we've got a
7 question about this, the agency simply takes a
8 harder look.

9 MS. LEE: When I -- and I don't mean to hijack
10 the conversation from these items that we're
11 talking about now, but when we get to the
12 codification of the Office of the Open Government,
13 I know we have AG Office personnel in the audience.
14 Do you mind if they speak to us about that?

15 MS. PETERSON: Absolutely not.

16 MS. LEE: I won't do it now, because I think
17 we need to decide on these issues, but I think we
18 could get some help from them, what they're doing
19 and how they can merge into this. I think it ought

20 to be a hand-in-hand operation.

21 MS. PETERSON: Absolutely. What we're trying

22 to do is enhance the opportunity.

23 SENATOR DOCKERY: Madam Chair, what agency

24 wouldn't agree to mediation?

25 MS. PETERSON: A number of them don't agree to

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1 mediation. In this particular case, it's a
2 specialist group.

3 SENATOR DOCKERY: And do you think that they
4 would be more inclined to agree if they had the
5 power of the Attorney General behind it, rather
6 than the Office of Open Government?

7 MS. PETERSON: No. In this particular case, I
8 think it's going to be -- but in some cases it
9 doesn't matter whether it's the Office of Open
10 Government, the Attorney General. Sometimes it's
11 the First Amendment Foundation, although we have no
12 legal authority. But --

13 SENATOR DOCKERY: And is there a conflict ever
14 in the Attorney General's Office, if they're
15 representing both the citizen and the agency?

16 MS. PETERSON: I don't believe that the
17 Attorney General would ever represent a local
18 government in a public records dispute. There may
19 be an issue if it was a state agency involved in a

20 public records dispute against a citizen, because
21 the Attorney Generals generally represent state
22 agencies. But to my knowledge, to this date,
23 there's never been a conflict. To my knowledge;
24 that doesn't mean there hasn't been.

25 There might be a case where the Attorney

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1 General declines to represent an agency. And I
2 think we actually did have that situation after
3 election in 2004 when we were trying to get the
4 purged felon list, and we sued the Division of
5 Elections over that. The Attorney General did not
6 represent the Division of Elections. So the AG can
7 decline to represent, but has the authority to
8 represent, state agencies.

9 So if I'm understanding this, we're scrapping
10 the "Require agencies to seek approval"
11 recommendation. And we're now looking at a
12 recommendation that would "Allow citizens an
13 opportunity to seek the advice of the Office of
14 Open Government when denied access to a public
15 record or when -- " We don't have to say "when
16 denied."

17 MR. D'ALEMBERTE: I wouldn't say "when
18 denied." My understanding, the way JoAnn talked
19 about it in response to Senator Dockery's question

20 that she frequently gave advice before.

21 MS. PETERSON: And make the process a little

22 more formal on your part, instead of -- and maybe

23 issuing a letter? Okay.

24 So that's recommendation number one. Do we

25 have a motion on that?

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1 MS. GRINSTEAD: So moved.

2 MS. PETERSON: Do we have a second?

3 MR. D'ALEMBERTE: Second.

4 MS. CARRIN: Carassas?

5 JUDGE CARASSAS: Yes.

6 MS. CARRIN: D'Alemberte?

7 MR. D'ALEMBERTE: Yes.

8 MS. CARRIN: Dockery?

9 SENATOR DOCKERY: Yes.

10 MS. CARRIN: Grinstead?

11 MS. GRINSTEAD: Yes.

12 MS. CARRIN: Lee?

13 MS. LEE: Could you restate the motion?

14 MS. PETERSON: I'll try, because I just have

15 chicken scratch.

16 MS. CARRIN: I can do it.

17 MS. PETERSON: Okay.

18 MS. CARRIN: It would be to "Amend the law

19 that gives the citizens to opportunity to seek

20 advice from the Office of Open Government in making

21 public records requests.

22 MS. LEE: Yes.

23 MS. CARRIN: Peterson?

24 MS. PETERSON: Yes.

25 MS. CARRIN: Pass.

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1 MS. PETERSON: Okay. Number two is the
2 Enhanced Fee Provision: "Amend the penalty
3 provisions to allow additional fees to be assessed
4 against an agency if a court determines that the
5 agency violated either the Sunshine or Public
6 Records Law; and, two, showed intentional disregard
7 for the public's constitutional right of access or
8 finds a pattern of abuse of access requirements by
9 the agency, stipulating such fees will be
10 deposited -- " And this can be determined. I put
11 "in the Office of Open Government for the purpose
12 of enhancing access to public meetings and public
13 records."

14 MS. LEE: Madam Chair?

15 MS. PETERSON: Uh-huh?

16 MS. LEE: I am in agreement until the point
17 you saying the fees shall be deposited with the
18 Office of Open Government. So could you split that
19 motion so that we could vote separately on those

20 items? I want the enhanced penalties available to
21 a person who's threatening a lawsuit. Not sure I
22 want it to take that and deposit it somewhere.

23 MS. PETERSON: Okay. I just stuck in the
24 Office of Open Government. My idea is that we do
25 not allow damages. Right now, a person does not --

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1 he gets attorney's fees and court costs but no
2 damages. If there are damages, you have to file a
3 separate suit. And we could put it in a trust
4 fund. For example, the Clerks of Court get to
5 charge an extra 50 cents, and that 50 cents goes
6 into a trust fund, and that trust fund is used to
7 enhance public access. How you word where it goes,
8 certainly -- but I would not -- I don't think I'd
9 like the idea of it going to the citizen. I don't
10 like the idea of damages allowed for public records
11 disputes. I think that sort of muddies up things.
12 If people incur damages, they have a civil suit
13 available to them.

14 SENATOR DOCKERY: Renee, can I make a
15 suggestion?

16 MS. LEE: Yes.

17 SENATOR DOCKERY: What if it were to say
18 "Stipulating that such fees will be used for the
19 purpose of enhancing access to public meetings and

20 public records," and not delineating "will be
21 deposited." Because any piece of legislation that
22 has to go through is going to have to identify
23 where it goes. And so that will be determined by
24 the Legislature through the appropriations process,
25 but you're giving enough direction, in that you

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1 want it to go towards the program.

2 MS. PETERSON: Towards enhancing. Does that
3 satisfy you, Renee?

4 MS. LEE: It does, to some extent. And maybe,
5 Senator, you can answer this for me. But could
6 that money be hijacked at any time and used for
7 other purposes?

8 SENATOR DOCKERY: Every dollar in the budget
9 can be hijacked, and CSX is an example of how
10 \$1.2 billion was hijacked. So yeah, nothing is
11 safe, and there is no trust in trust funds. It is
12 a misnomer.

13 MR. D'ALEMBERTE: And I was going to come
14 forward with another amendment and suggest the
15 money go to the First Amendment Foundation.

16 MS. PETERSON: I would support that
17 100 percent.

18 MR. D'ALEMBERTE: If that's not in order, I
19 like the resolution of just saying it goes for the

20 program and let the Legislature figure out where it

21 goes.

22 MS. PETERSON: And again, as I said, I just

23 stuck it in there. It had to go somewhere.

24 So we're going to amend the recommendation so

25 that the -- stipulating that "Such fees will be

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1 used for the purpose of enhancing access to public
2 meetings and public records." You know, it could
3 be the AG could use it; it could be the Office of
4 the Open Government could use it; it could be a
5 huge grant to the First Amendment Foundation;
6 travel expenses for training; all sorts of things.
7 So I do like the Senator's amendment to the
8 recommendation.

9 Do we have a motion?

10 SENATOR DOCKERY: So moved.

11 MS. PETERSON: Do we have a second?

12 JUDGE CARASSAS: Second.

13 MS. CARRIN: Carassas?

14 JUDGE CARASSAS: Yes.

15 MS. CARRIN: D'Alemberte?

16 MR. D'ALEMBERTE: Yes.

17 MS. CARRIN: Dockery?

18 SENATOR DOCKERY: Yes.

19 MS. CARRIN: Grinstead?

20 MS. GRINSTEAD: Yes.

21 MS. CARRIN: Lee?

22 MS. LEE: Yes.

23 MS. CARRIN: Peterson?

24 MS. PETERSON: Yes.

25 Okay. Next, we have the Office of Open

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1 Government. And Alexis Lambert is here from the
2 Attorney General's Office, and I would like to make
3 a couple of comments before we ask her to come up.

4 One, the first of these is that we codify the
5 Office of Open Government within the Governor's
6 Office with the stipulation that the placement in
7 the Governor's Office be reviewed within five
8 years, simply because the Office, the Governor's
9 Office -- we may want to make this a higher level
10 office or agency within a certain period of time.

11 Remember that the Office of Open Government was
12 created by executive order. That means it is
13 subject to termination at the end of this
14 Governor's term, and I think we've all seen the
15 value of the Office of Open Government and that we
16 would want to codify it.

17 Second, we would expand the authority of the
18 Office of Open Government to include all agencies;
19 in other words, to provide education, guidance,

20 advice, to all agencies, including local
21 governments. This was part of the bill, Senate
22 Bill 2008, in the 2008 legislative session. It was
23 part of a much larger bill. Tab 26. Then there
24 was a suggestion, a recommendation, that we
25 consolidate all open government initiatives by

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1 transferring the authority to operate the Public
2 Records Mediation Program -- and that's
3 misstated -- Public Records Mediation Program from
4 the Attorney General's Office to the Office of Open
5 Government.

6 And before I have Alexis come up, I will say
7 that I think that recommendation was made -- we had
8 two Attorney Generals, Attorney General Bob
9 Butterworth and Attorney General Charlie Crist, who
10 had the good fortune to have someone on staff with
11 tremendous expertise in the area of open
12 government, and that was Pat Gleason. When Charlie
13 became governor, Pat moved to the Governor's Office
14 with Charlie. She now serves as Special Counsel to
15 the Office of Open Government. And Attorney
16 General McCollum had some difficulty in finding a
17 person with her expertise, or with the willingness
18 to develop, or the interest to develop that
19 expertise. And the program, the mediation program,

20 I say very candidly, floundered for a while. And
21 there was some frustration because of that lack of
22 opportunity. Alexis Lambert was appointed in the
23 spring to run the mediation program. She's getting
24 her feet under her. It is a huge learning curve.
25 And my suggestion would be that when we

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1 revisit, if -- this would be my suggestion: when we
2 revisit the placement of the Office of Open
3 Government, we then consider whether we need to
4 consolidate all open government activities under
5 one office. I think if we get the program up and
6 running, as it seems to be moving in that direction
7 now, that there's some benefit to having a place
8 where we can go for help and advice, and a place
9 where we go for mediation and formal legal
10 opinions; that we have the informal process. We
11 expand the Office of Open Government so we can help
12 local governments they really need it badly, and
13 then we have the separate, heavy-chop option of
14 going to the Attorney General. That's my
15 recommendation. So we have three issues here.

16 But if Alexis wants to come up and tell us how
17 things are going. I know it's -- like I said, when
18 she came to meet me with Judge A-ko (phonetic), I
19 didn't envy her, because it is a huge, huge

20 learning curve.

21 Alexis, if you want to come up and tell us how

22 things are going.

23 MR. D'ALEMBERTE: And as she's coming up, may

24 I add a historical note?

25 MS. PETERSON: Yes, sir.

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1 MR. D'ALEMBERTE: Bob Sheldon and Sharon Smith
2 should also be mentioned in that conversation,
3 because this whole process of the Attorney General
4 paying attention to these issues really became very
5 much top drawer. And Sharon was really a great
6 woman.

7 MS. PETERSON: Sharon was Pat's predecessor.
8 This is Alexis Lambert.

9 And, Renee, did you have a --

10 MS. LEE: Well, I know you've sat here and
11 heard the conversation, the discussion, that the
12 Commission has had. And I'm curious about the role
13 of the Attorney General's Office in mediating
14 disputes between local agencies and citizens; how
15 the Attorney General's Office operates with the
16 Office of Open Government; what you see in the
17 future, your relationship could be with the -- how
18 do you see this relationship going forward?

19 MS. LAMBERT: What we're doing right now is,

20 we have the mediation program running. And it has
21 floundered for a while, particularly because one of
22 our attorneys, who is a very senior attorney with
23 substantial public records and government
24 experience from our opinions department, has been
25 recovering from colon cancer for a few months.

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1 She's doing very well, and she's just been a
2 fantastic employee of our office. But we went down
3 from three highly-skilled, incredibly experienced
4 mediators to two. And cancer does that to people.
5 But the program is moving forward.

6 In my role since taking on the job in June, I
7 serve another layer of alternative dispute
8 resolution. I take calls every day from citizens,
9 from media, and from government entities with
10 questions about how to handle a specific fact
11 pattern or, whether they're -- say a certain
12 commission is being created. Should they operate
13 in the Sunshine? Or, you know, what functions can
14 they perform in and out of public purview? I
15 sometimes help -- often, I help mediate agencies
16 that are having problems securing a certain set of
17 documents. I tend to help the -- before we even
18 get to the mediation process. Those of you who
19 geeked out in law school about alternative dispute

20 resolution know that it has to be voluntary by all
21 parties in the process, or it just really loses
22 it's effectiveness.

23 In my fantasy land where budget and personnel
24 are not an issue, I would love to have a squadron
25 of Sunshine prosecutors in the various judicial

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1 circuits, nailing people for public records
2 violations. That's clearly not practical, given
3 this particular time period and budget cycle and
4 what's available to us. In my own agency, right
5 now is 400 full-time employees short. The only fat
6 left in my agency is on my thighs. It's actually
7 not that far from true.

8 I try to help people before they reach the
9 mediation stage. Sometimes a quick phone call to
10 an agency with a friendly reminder can help
11 expedite the process tremendously. And sometimes,
12 maybe a not-so-friendly call to an agency after the
13 friendly phone call also helps move things along.

14 There are some disputes that have to go to
15 mediation just because they do. And there are some
16 disputes that are not going to work in mediation,
17 because somebody wants to fight. And those of us
18 who have had experience in any capacity with the
19 practice of law know that there are some people who

20 just want to fight. And that's not always
21 something that we can take care of for them.
22 I've been keeping a call journal. Actually,
23 I've been "Bob Graham-ing" it through this call
24 journal to remember the different fact patterns
25 that confront me on a daily basis. When I first

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1 took the job, Barbara Peterson told me that every
2 week she has at least one scenario that she's never
3 heard of in her entire career, as far as public
4 records issues goes, which made me feel a lot
5 better. Because if you're still hearing new stuff
6 every day, then, clearly I'm not as big an idiot as
7 I sometimes feel I am. It is an interesting field
8 of law. I basically did sort of a do-it-yourself
9 CLE to get started on public records issue, and I
10 find that a lot of times, even city attorneys,
11 especially in smaller municipalities, do not
12 understand the ramifications of the Sunshine and
13 Public Records Law and often are not capable of
14 giving appropriate legal advice in some of these
15 situations.

16 MS. LEE: Let me help focus you on some
17 questions that I have right now. Tell me how
18 you're working with the Office of Open Government
19 now.

20 MS. LAMBERT: Right now, we're sort of
21 operating, sort of a parallel, yet separate
22 capacity. I think the Office of Open Government,
23 right now, is operating on a more macro level.
24 They're sort of preaching the gospel of open
25 government and public records on a grander scale.

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1 Whereas, I sit in my office and take phone calls
2 from individuals from varying walks of life. And
3 sometimes they call the Office of Open Government
4 for the same reason that they would call me,
5 depending on who's available and who answers the
6 phone at whatever given time.

7 MS. LEE: Are you providing any legal opinions
8 to the Office of Open Government regarding records
9 or Sunshine Laws?

10 MS. LAMBERT: No, not as of late.

11 MS. PETERSON: They have a special -- Pat
12 Gleason serves as Special Counsel to the Office of
13 Open Government.

14 MS. LEE: Oh, I see.

15 MS. LAMBERT: Yeah. They've got their, sort
16 of, in-house icon of First Amendment law. She just
17 happens to occupy a table in their office.

18 MS. LEE: How do you see the role of the
19 Attorney General's Office fitting in with a program

20 where a citizen is maybe represented by the Office
21 of Open Government. How does that work? Or is
22 there -- do you see a role with the Attorney
23 General's Office, the Office of Open Government, in
24 a situation where there's a dispute? And how would
25 you see that playing out?

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1 MS. LAMBERT: It would really depend on -- I
2 mean, I would really like to see what the Office of
3 Open Government is interested in embarking on. I
4 mean, right now, we're very dedicated to the
5 mediation program, improving it, working on it,
6 developing a better model, and helping with the
7 cost-free, easy, alternative dispute resolution
8 method. As we know, every court docket in the land
9 is completely overburdened. I would say right now,
10 we're trying to "MacGyver" together all of these
11 programs with, you know, dental floss and angel's
12 wings, because we have no money and we're in dire
13 need of staff.

14 But I would definitely -- you know, we want to
15 improve and expand the mediation program. We want
16 to be a valid resource for legal advice to media,
17 and consumers, and to the government agencies. You
18 know, we still -- I like to think of the Attorney
19 General's Office as the friendly geek who you call

20 for help when you don't understand the problem.

21 And that's a very colloquial way of explaining.

22 MS. LEE: Do you have any power to prosecute?

23 MS. LAMBERT: As of right now, no. That is

24 something we're also discovering to be a problem.

25 Sometimes a local government will be partaking in a

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1 pattern of behavior that doesn't smell right. But
2 if you can't get the state attorney's office in
3 your judicial district to go after the offending
4 entity, you are coming up short in terms of legal
5 remedies. You do have to hire private counsel and
6 pursue civil remedies, which is, at times, very
7 difficult to even secure in a number of different
8 fora.

9 We do -- you know, there is that, and
10 sometimes consumers expect us to be able to bust
11 out the magic wand and make things right; sometimes
12 for good reasons and sometimes for crazy reasons.
13 But we do have -- the enforcement -- the lack of
14 enforcement power on the criminal side of the coin
15 does limit us in a sense, but, at the same time,
16 we've got a staff problem.

17 MS. PETERSON: Jeanne?

18 MS. GRINSTEAD: Let me ask this: It does
19 sound a little bit like the AG Mediation Program

20 and the Office of Open Government are duplicating
21 efforts in assisting local governments in a time of
22 a strained economy. What do you say to that?

23 MS. LAMBERT: I don't think it's necessarily
24 duplicative at the moment. I think different
25 entities are calling us than are calling the Office

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1 of Open Government. I think, you know, sometimes
2 it might seem a little duplicative because some
3 government entities are long-time frequent fliers
4 in the First Amendment realm, might only want to
5 talk to Pat Gleason because that's who they've been
6 speaking to for the last number of years.

7 We definitely hold -- and I know the elected
8 principal of my agency holds the mediation program
9 to be a big priority and would be incredibly
10 opposed to losing it. You know, there are --
11 there's an opportunity for us to work this out, and
12 if the Office of Open Government wants a certain
13 type of jurisdiction, there's always room for
14 adjusting that. At the moment, I don't even know
15 how many attorneys are on staff at the Office of
16 Open Government.

17 MS. PETERSON: Pat Gleason.

18 MS. LAMBERT: It's just Pat. Right. And
19 she's doing Cabinet, and she's -- I don't think

20 she's slept since Bob Martinez was governor.

21 MS. PETERSON: And Jeanne, I can answer your

22 question to some extent. I don't think they're

23 duplicative. For example, Office of Open

24 Government does training, does outreach. The

25 Attorney General's Office runs the mediation

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1 program and, fortunately, also answers questions.

2 And I think that there's a little triumvirate here

3 that works together very well. If Alexis has a

4 question about something, she will sometimes call

5 me, she'll sometimes call the Office of Open

6 Government, get our opinion, get our advice. I

7 call Pat. You know, it's -- we all -- and

8 sometimes we'll have the citizen -- I can think of

9 one, specifically, who comes to me, wants my

10 opinion, then goes to Alexis and gets her opinion,

11 then goes to JoAnn to get her opinion, and then

12 calls Pat.

13 And there's -- I would strongly discourage

14 limiting the Office of Open Government to only

15 this. I would strongly discourage the AG's Office

16 from refusing to take a call from a citizen about a

17 question. I think that as this program is brought

18 back up to speed, I think that we have sort of the

19 perfect meshing. There is some overlap, but that

20 overlap is not -- it's an attempt to assist people,

21 not in terms of necessarily statutory design. I

22 don't think that there is a significant overlap.

23 If it is, it's in an attempt to assist.

24 The AG's Office does not have to take calls

25 from citizens to answer questions. We've

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1 encouraged them to do that because it's an
2 important resource. And as Alexis said, sometimes
3 they'll call me, I'm not there so they'll call
4 Alexis; she's not there, or vice versa, they'll
5 call JoAnn; she's not there. And they just -- they
6 have us all on speed dial.

7 MS. LAMBERT: It really has evolved to be,
8 even in a relatively short period of time, a very
9 colloquial relationship. And we do call on each
10 other at different times for different purposes. I
11 haven't had necessarily to call -- every so often,
12 there will be an email, you know, conversation
13 about it, about an upcoming issue or have we heard
14 something, and there will be a little bounce back,
15 in that sense. But it's much more of an academic
16 type of discussion really. You know, sometimes --
17 and we'll back each other up, or we'll be a
18 sounding board, because some of these issues are --
19 particularly with some of the issues we're facing

20 with technology -- they're going to require,
21 really, a multidisciplinary approach and a lot of
22 very academic and scholarly research to come up
23 with these ideas about how to cope with what's
24 coming at us, particularly in the realm of
25 technology.

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1 MS. PETERSON: Senator?

2 SENATOR DOCKERY: Just a comment. And Alexis,
3 thank you for telling us what's going on there. I
4 think that it may seem duplicative now, but I think
5 because the Office is not codified, because we're
6 operating under executive order, and because the
7 focus of the Office for this year has been to
8 organize all of our meetings, all of our materials,
9 and all our public hearings, that it's not very
10 indicative of where it's going to be once our job
11 is over at the end of the year. So I think -- and
12 I don't have strong feelings about where it is. I
13 have strong feelings it ought to be codified, but
14 just from the discussion here, it seems to me that
15 the Office of Open Government ought to have most of
16 the questions directed to it; the Office of Open
17 Government ought to do most of the, or all of the
18 training; the Office of Open Government should
19 probably have an IT person that can help with the

20 data questions that come up; and then the AG's
21 Office should focus more on the legalistic aspects,
22 the mediation; and I think they should have -- and
23 I may be wrong. I'm not an attorney -- the
24 prosecutorial ability so that they can put, you
25 know, they can actually represent those

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1 individuals.

2 MS. LEE: Move approval.

3 MS. PETERSON: Let me -- before we --

4 remember, we've got three here. In codifying the

5 Office of Open Government, we won't simply say

6 we're creating an Office of Open Government. We

7 will specifically, you know, enumerate what the

8 office is going to do in terms of education and

9 outreach. So perhaps, we do have budgetary

10 restraints. So we've got three under H: codify the

11 Office of Open Government within the Governor's

12 Office, with the stipulation that such placement be

13 reviewed in five years. And my idea of keeping it

14 in Office of Open Government is it's currently

15 funded as the Office of Open Government. We're not

16 talking about any fiscal impact. They're funded,

17 they're staffed, they have resources available to

18 them now, and I did not want to do anything that

19 would carry a fiscal impact. So that's one.

20 Second, expand the authority of the Office of
21 Open Government to include all agencies, including
22 local governments. As I said, that was contained
23 in a bill that was filed in 2008. I talked to
24 JoAnn, I talked to Pat Gleason about this, and
25 there is a consensus they can do this with their

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1 existing resources. They're already doing it.

2 We're just making it official.

3 Then three, there was a recommendation that we
4 consolidate all open government initiatives by
5 transferring the authority to operate the Public
6 Records Mediation Program from the Attorney
7 General's Office to the Office of Open Government.

8 I suggest that we amend that to say that we
9 consider consolidation in five years, and including
10 in that, giving the Attorney General's Office -- or
11 whoever takes it -- prosecutorial authority to deal
12 with public records issues. There, we again -- we
13 give the Office, the mediation program, time to
14 rebuild and regroup and look five years from now
15 and see if we want to create one state-wide office.

16 So motion on one, codify the Office of Open
17 Government within the Governor's Office with the
18 stipulation that the programs and the placement be
19 reviewed in five years?

20 MS. LEE: Move approval.

21 MS. GRINSTEAD: Second.

22 MS. PETERSON: All these in favor? Excuse me.

23 You have to call the roll. I'm getting tired.

24 MS. CARRIN: Carassas?

25 JUDGE CARASSAS: Yes.

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1 MS. CARRIN: D'Alemberte?

2 MR. D'ALEMBERTE: Yes.

3 MS. CARRIN: Dockery?

4 SENATOR DOCKERY: Yes.

5 MS. CARRIN: Grinstead?

6 MS. GRINSTEAD: Yes.

7 MS. CARRIN: Lee?

8 MS. LEE: Yes.

9 MS. CARRIN: Peterson?

10 MS. PETERSON: Yes.

11 Second, expand the authority of Office of Open
12 Government to include all agencies, including local
13 governments. Motion?

14 MS. LEE: Before we vote on that -- I
15 apologize. What's the authority we're talking
16 about?

17 MS. PETERSON: Right now, the Office of Open
18 Government, because it is executive order, is
19 limited to providing its services only to those

20 agencies under control of the Executive Office of
21 the Governor. So this would give them legal
22 authority to do what they're already doing.

23 MS. LEE: Move approval.

24 SENATOR DOCKERY: Second.

25 MS. CARRIN: Carassas?

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1 JUDGE CARASSAS: Yes.

2 MS. CARRIN: D'Alemberte?

3 MR. D'ALEMBERTE: Yes.

4 MS. CARRIN: Dockery?

5 SENATOR DOCKERY: Yes.

6 MS. CARRIN: Grinstead?

7 MS. GRINSTEAD: Yes.

8 MS. CARRIN: Lee?

9 MS. LEE: Yes.

10 MS. CARRIN: Peterson?

11 MS. PETERSON: Yes.

12 Number three, consider consolidation of all
13 open government initiatives, including transferring
14 authority to operate the Public Mediation Program
15 from the Attorney General's Office to the Office of
16 Open Government in five years, including granting
17 prosecutorial authority. Motion?

18 MS. GRINSTEAD: So moved.

19 MS. PETERSON: Second?

20 SENATOR DOCKERY: Second.

21 MS. CARRIN: Carassas?

22 JUDGE CARASSAS: Yes.

23 MS. CARRIN: D'Alemberte?

24 MR. D'ALEMBERTE: Pass.

25 MS. CARRIN: Dockery?

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1 SENATOR DOCKERY: Yes.

2 MS. CARRIN: Grinstead?

3 MS. GRINSTEAD: Yes.

4 MS. CARRIN: Lee?

5 MS. LEE: What does "pass" mean?

6 MR. D'ALEMBERTE: I've still got to vote, I
7 think, but I'm worried about prosecutorial
8 authority.

9 MS. PETERSON: Okay.

10 MR. D'ALEMBERTE: And I just --

11 MS. PETERSON: I'm not sure we can give them
12 prosecutorial authority.

13 MR. D'ALEMBERTE: I'm not sure either. And I
14 think we really stumbled across some constitutional
15 issues.

16 MS. PETERSON: So would you like me to
17 restate --

18 MR. D'ALEMBERTE: If you restate it without
19 "prosecutorial," that would allow me to vote for

20 it.

21 MS. PETERSON: We'll withdraw that and restate

22 it without, and I'll look into that. But I'm not

23 sure we can -- for example, if it is the Department

24 of State being sued, I'm not sure that the Attorney

25 General would act as the prosecutor.

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1 MR. D'ALEMBERTE: And that's my --

2 MS. PETERSON: Okay. We will restate this:

3 consider consolidation of open government

4 initiatives, including the transfer of the

5 authority to operate the Public Records Mediation

6 Program from the Attorney General's Office to the

7 Office of Open Government in five years. Do I have

8 a motion?

9 SENATOR DOCKERY: So moved.

10 MS. PETERSON: Do I have a second?

11 MS. LEE: Second.

12 MR. D'ALEMBERTE: May I pause again? Could we

13 put the "in five years consider," can we move that

14 timeframe as part of that motion so that we're not

15 deciding that in five years, but that we want the

16 review to occur in five years?

17 MS. PETERSON: Yes. I'll wordsmith it.

18 MS. CARRIN: Carassas?

19 JUDGE CARASSAS: Yes.

20 MS. CARRIN: D'Alemberte?

21 MR. D'ALEMBERTE: Yes.

22 MS. CARRIN: Dockery?

23 SENATOR DOCKERY: Yes.

24 MS. CARRIN: Grinstead?

25 MS. GRINSTEAD: Yes.

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1 MS. CARRIN: Lee?

2 MS. LEE: Yes.

3 MS. CARRIN: Peterson?

4 MS. PETERSON: Yes.

5 And that will -- in five years then, we'll
6 have a review of all of the government initiatives,
7 and we'll see what kind of consolidation -- and
8 again, what we're trying to do is avoid fiscal
9 impact. Okay.

10 Thank you Alexis.

11 Citizen's Rights. Now, this first one is a
12 big one, I understand. But in reading the Sunshine
13 Law and in reading the Public Records Law, I saw
14 some fairly dramatic inconsistencies. The fee
15 provision being one -- excuse me, the enforcement
16 provision being one, where under the Sunshine
17 Law -- and I checked around and we have not limited
18 prosecution of Sunshine Law issues to only citizens
19 of the state, but that's the way the law is

20 written. And what -- we have problems sometimes

21 with consistency of definitions, training

22 requirements, all of that.

23 So my first recommendation is that we

24 consolidate the Sunshine Law and the Public Records

25 Law into one chapter of the Florida statutes,

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1 Florida's Open Government Law. We have Part One,
2 Definitions, whatever, just as we do with other
3 statutes; we have a Right of Access to Meetings; we
4 have a Right of Access to Records; and then we can
5 provide different penalties if we want to, but the
6 enforcement provisions would be the same. So that
7 we do a consolidation of the Public Records Law.
8 And again, that adds to our charge to try to
9 clarify and consolidate where possible.

10 So that's number one. Any discussion?

11 SENATOR DOCKERY: Who would actually do that
12 rewrite?

13 MS. PETERSON: I'd take a stab at it and then
14 I'm sure the Senate Governmental Oversight and
15 House Governmental Operations Committee or State
16 Administration Committees would.

17 SENATOR DOCKERY: So would we be proposing
18 language or would we be recommending that the
19 Legislature do this?

20 MS. PETERSON: We would be recommending that
21 the Legislature do this, and then we would provide
22 language. I'm not recommending that we change
23 anything but some inconsistencies, but I think it
24 would help clarify things in terms of what we've
25 talked about: Some changes, maybe by adding

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1 definitions, but certainly nothing other than
2 consolidation at this point.

3 SENATOR DOCKERY: Are there citations
4 throughout other statutes that refer you to those
5 laws?

6 MS. PETERSON: Yes.

7 SENATOR DOCKERY: So it would be a big
8 revisionist kind of process?

9 MS. PETERSON: But I don't think it would be.
10 The big change -- it would depend on how we did it.
11 I think we could keep all of the citations, perhaps
12 through Chapter 119, consistent. And it would be
13 the Sunshine 286 citation, that statutory revision,
14 we'd have to deal with. I think we could keep the
15 Public Records Law sort of intact and only change
16 the citations for the Sunshine Law. I think.
17 Which are much smaller in number.

18 MS. LEE: So the exemptions that exist would
19 remain in the chapters of -- over areas of law that

20 they --

21 MS. PETERSON: Correct.

22 MS. LEE: All right. So we would only put the

23 law -- I guess the few paragraphs of the Sunshine

24 Law and then the Public Records Law all under one

25 chapter; is that what you're saying?

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1 MS. PETERSON: That's what I'm saying.

2 MS. LEE: And then exemptions for law
3 enforcement or names or Department of Health or
4 whatever will remain in those --

5 MS. PETERSON: Where they are.

6 MS. LEE: -- different chapters.

7 MS. PETERSON: Well, different chapters. And
8 also the exemptions that apply specifically to
9 meetings would stay in the part of the chapter
10 dealing with meetings; the public records
11 exemptions would stay in the part dealing with
12 public records. So what we would be doing is not
13 changing the law, but just merging the two,
14 basically.

15 MS. LEE: Okay. Because there are exemptions
16 scattered throughout Florida statutes.

17 MS. PETERSON: Those would stay where they
18 are.

19 MS. LEE: Okay. Madam Chair, could you

20 explain the need to do this?

21 MS. PETERSON: Again, we have a problem

22 where -- it came to my attention with the ability

23 to bring suit. That's one issue. Under the

24 Sunshine Law, it says a citizen in practice -- they

25 don't limit those to the citizen under the Public

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1 Records Law; it says any person. So inconsistency
2 of language. The consistency of definitions.
3 There's no definition of "agency" in the Sunshine
4 Law, but the courts use the definition from the
5 Public Records Law. And when we're talking about
6 the right of open government, if we could have it
7 all in one chapter, as most states do, then we have
8 one place to go instead of here and there.

9 It's simply sort of an attempt to clean it up,
10 codify, you know, get some consistency there.
11 We're not talking about any significant changes,
12 other than those we have already approved; for
13 example, the definition of "exempt" versus "exempt
14 and confidential." We're not talking about
15 expanding any exemptions that are already in the
16 law, except as we've already discussed or approved.
17 But those would have to be in separate bills
18 anyway. We'd not be able to do anything but clean
19 up stuff in one chapter.

20 JUDGE CARASSAS: Can I make a suggestion?

21 We'll take care of the second item, too. If we're

22 going to consolidate, it wouldn't be a bad idea to

23 have a preamble, which would be similar to the Bill

24 of Rights that we already have there. I wouldn't

25 mind -- we can do a separate motion. However you

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1 want to do it, Madam Chair. But if we're going to
2 go ahead and consolidate it and make it simpler,
3 then you would put the Citizen's Bill of Rights,
4 it's just a few paragraphs, and in our packet it's
5 page number 27. That would be a perfect beginning
6 to that amendment chapter.

7 MS. PETERSON: Correct.

8 JUDGE CARASSAS: And explain that. So I would
9 do a motion for both, together or separately;
10 however you want to do it.

11 MS. PETERSON: If there's any -- I mean, it's
12 fine by me.

13 We want to do it two motions, JoAnn?

14 MS. CARRIN: Well, one issue will be Bill of
15 Rights is requiring local governments to adopt the
16 Bill of Rights, which would be separate from having
17 it in the preamble to the consolidation bill.

18 JUDGE CARASSAS: I thought you were just
19 talking about putting it -- it has to be out

20 separately, then?

21 MS. PETERSON: Yeah, we'll do it separately.

22 Okay. So do we have a motion on consolidating

23 the Sunshine Law and the Public Records Law into

24 one chapter?

25 JUDGE CARASSAS: I move to consolidate as

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1 stated.

2 MS. PETERSON: Second?

3 MR. D'ALEMBERTE: Second.

4 MS. CARRIN: Carassas?

5 JUDGE CARASSAS: Yes.

6 MS. CARRIN: D'Alemberte?

7 MR. D'ALEMBERTE: Yes.

8 MS. CARRIN: Dockery?

9 SENATOR DOCKERY: Yes.

10 MS. CARRIN: Grinstead?

11 MS. GRINSTEAD: Yes.

12 MS. CARRIN: Lee?

13 MS. LEE: Yes.

14 MS. CARRIN: Peterson?

15 MS. PETERSON: Yes.

16 The consolidation of the Citizen's Bill of
17 Rights. Did you say it was page 27, Judge?

18 JUDGE CARASSAS: Yes.

19 MS. PETERSON: If you remember right after our

20 Tallahassee meeting when we had that -- all the
21 testimony from the citizens, and you were so happy
22 we didn't have a gavel, the Governor responded
23 almost immediately by -- and it was a
24 recommendation, actually made by Pat Gleason -- a
25 suggestion, I would say, made by Pat Gleason -- at

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1 the Tallahassee meeting, the Governor responded by
2 issuing an executive order outlining the Citizen's
3 Bill of Rights related to open government. And
4 they are listed here. They're over there on that
5 big board.

6 And JoAnn can tell us, I think, most of the
7 state agencies --

8 MS. CARRIN: The Governor required all state
9 agencies under his jurisdiction to have a Bill of
10 Rights and have it posted in their lobby area where
11 it was conspicuous to the public; also on their
12 website where it is an obvious place. There were a
13 lot of other agencies that did not fall under his
14 jurisdiction that also followed suit, and we had a
15 few local governments call and inquired and also
16 went through the process. But this did come from
17 the public hearing here in Tallahassee and the
18 citizens from Taylor County who testified
19 emotionally.

20 MS. PETERSON: And I will say in reading the
21 testimony from Pat also suggested that we might
22 want to consider adoption of a Bill of Rights to
23 make it clear what the citizen has the right to.
24 And so that is what's before us now.
25 Codification -- if we decide to codify, we would

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1 most likely stick it in that consolidated Open
2 Government Law. And it would then require -- now
3 they're here; they're simple restatements of
4 current law. We're not expanding the law. In
5 fact, we agonized over language to make sure that
6 we did not expand current law. It's basically a
7 codification of what the law already requires.

8 SENATOR DOCKERY: What are you referring to as
9 the Bill of Rights?

10 MS. PETERSON: The Executive Office of the
11 Governor of Open Government Bill of Rights.

12 SENATOR DOCKERY: Okay. This short page.

13 MS. PETERSON: Yes, the short page.

14 MS. CARRIN: That's the one that pertains just
15 to the Executive Office of the Governor. Each
16 agency pretty much adopted the same language. But,
17 obviously, they'd have to name their agency.

18 JUDGE CARASSAS: You mentioned, JoAnn, the
19 application of local government.

20 MS. CARRIN: That was one thing that we had
21 discussed. The reason for putting it into law was
22 to have the ability to require local government to
23 adopt a similar Bill of Rights.

24 JUDGE CARASSAS: The law already requires the
25 local government, so we're not, by putting that,

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1 codifying the Bill of Rights. We're not really
2 adding anything.

3 MS. PETERSON: Correct; we're not, except the
4 requirement that they adopt it. We could use it as
5 a preamble, as you said, but we're not -- well, you
6 know, "Members of the public are entitled to be
7 treated with respect, courtesy, and
8 professionalism." That's not a legal requirement,
9 presumably, right now. And again, we could adopt
10 it as a model. But the other statements, "Public
11 record requests do not have to be made in writing.
12 They shall be acknowledged promptly and in good
13 faith. Fee shall not exceed -- " these are not
14 issues. With the exception of that courtesy and
15 professionalism, we're restating current law.

16 JUDGE CARASSAS: I'd like to see it as a
17 preamble. But if that's a problem, I need to be
18 convinced of that.

19 MS. PETERSON: It's not a problem for me.

20 JUDGE CARASSAS: That's how I would suggest

21 we --

22 MS. PETERSON: Like, whereas clauses, or just

23 the preamble?

24 JUDGE CARASSAS: I've seen statutes -- and as

25 a judge, and as a lawyer too, I'm always

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1 apprehensive about adding anything in the statute
2 books that's not clear and doesn't have a specific
3 point. But we do have statutes where there's a
4 introduction that says what the intent is of the
5 entire thing. So I think that's okay. This would
6 fit in that. I just want to make sure that we
7 don't have an unintended circumstance and force
8 every city and county to pass some type of
9 resolution ordinance adopting this. That's not
10 really what I'm intending. I'm intending putting
11 it in the Florida statutes, along with our
12 consolidation, and let it be known to the world
13 that this is what we have to follow.

14 MS. PETERSON: So perhaps codification of the
15 Citizen's Bill of Rights as a preamble or --

16 JUDGE CARASSAS: Not force the local
17 government to pass every single one. I don't think
18 that's really the Governor's intent or ours.

19 MS. CARRIN: It was, at one time, to get the

20 attention of local government, to re-enforce that

21 they need to follow these same principles.

22 MS. PETERSON: But, again, I see your point if

23 we put it as a preamble.

24 JUDGE CARASSAS: It applies to everybody.

25 MS. PETERSON: It applies to everybody and it

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1 doesn't require separate adoption.

2 SENATOR DOCKERY: Judge, would you need to
3 change the end of the first sentence so that
4 instead of saying "when interacting with the
5 Executive Office of Governor," you would be saying
6 something to the effect "when interacting with any
7 state agency"?

8 MS. PETERSON: We could just say "with any
9 agency". And that specific agency, then, we'd
10 refer back, so that would incorporate the
11 definition that's already there.

12 JUDGE CARASSAS: That's my motion, with the
13 amendment by Senator Dockery.

14 MS. PETERSON: Okay. So that we would,
15 basically, codify the Citizen's Bill of Rights, as
16 amended, as a preamble to the Consolidated Open
17 Government Law.

18 JUDGE CARASSAS: That's my motion.

19 SENATOR DOCKERY: Second.

20 MS. CARRIN: Carassas?

21 JUDGE CARASSAS: Yes.

22 MS. CARRIN: D'Alemberte?

23 MR. D'ALEMBERTE: Yes.

24 MS. CARRIN: Dockery?

25 SENATOR DOCKERY: Yes.

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1 MS. CARRIN: Grinstead?

2 MS. GRINSTEAD: Yes.

3 MS. CARRIN: Lee?

4 MS. LEE: Yes.

5 MS. CARRIN: Peterson?

6 MS. PETERSON: Yes.

7 Okay. This next one is right after your --

8 the Bill of Rights; it's in the same tab. We had

9 some concern and some testimony as to privacy

10 concerns. Under Florida law, we have a

11 constitutional right to privacy. Under Article

12 One, Section 3, we have the right to be free from

13 governmental intrusion into our private lives.

14 Article one, Section 23 specifically states that

15 that right to privacy is secondary to the public's

16 right of access. Then we have the constitutional

17 right of access.

18 As a matter of -- under the Open Government

19 Sunset Review Act, there are stated standards for

20 the creation of new exemptions. They have to be --
21 we would create an exemption to protect sensitive,
22 personal information or proprietary information.
23 There are three or four provisions in the Open
24 Government Sunset Review Act. We cannot
25 technically or legally justify an exemption to the

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1 Public Records Law, based on the right of privacy.
2 And as we heard, sort of repeatedly, we have a
3 problem, not so much with protecting information
4 under the Public Records Law. I think the
5 Legislature does a very good job of, sort of,
6 carving out those exemptions. The issue,
7 frequently, is the collection of personal
8 information by an agency without any justification
9 or need to collect the information.

10 We were talking yesterday about applying for a
11 hunting license or a fishing license. Why does
12 Game and Fish need my social security number? So
13 the Fair Information Practices Act has been
14 considered by the Legislature in the past, not for
15 many number of years. It's been about ten years, I
16 think, maybe a little longer, since the last time
17 they considered it. This is the most recent
18 version of the Fair Information Practices Act that
19 was considered by the Legislature, and basically

20 what it does is, it does three things -- or two
21 things. It makes an agency, first, consider and
22 justify its need to collect personal information.
23 If an agency does not collect it, it does not
24 become subject to public disclosure. That is a big
25 step forward.

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1 Second, it allows an individual the right to
2 review and challenge the accuracy of information
3 held by government. I can give you a personal
4 example. A number of years ago, I was denied
5 coverage by my insurance company for a medical
6 procedure, because government, the State of
7 Florida, had misstated my birth date as 1/12/00,
8 and they said I was too old to be doing what I was
9 wanting to do. And that just took a simple phone
10 call, You got my birth date wrong. But not
11 everybody has that experience. So this gives
12 people the right to review their own personal
13 information, to challenge the accuracy of the
14 information.

15 It has some very specific exceptions to that;
16 for example, Department of Corrections, Department
17 of Juvenile Justice. You can see all of the
18 exceptions, I think, listed on page two. So you
19 have the right to contest the accuracy or

20 completeness of the information, and then you can
21 make a written request to challenge, or to change,
22 or to fix the information. The agency can review
23 your request and say, Okay, we're going to change
24 it or the agency can deny it. If it's denied, the
25 subject of the record has the right to request that

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1 their challenge be made part of that record. And
2 it only pertains to personal information about an
3 individual. This goes to the issue, I believe, of
4 data protection and, again, the collection of
5 personal information by an agency. So this is, as
6 I said, what was considered the last time this was
7 before the Legislature. Questions?

8 MS. GRINSTEAD: I may be reading this wrong,
9 but this section does not apply to --

10 MS. PETERSON: What page are you on, Jeanne?

11 MS. GRINSTEAD: Well, it starts on page one.
12 "This section does not apply to" -- and then on
13 page two, number E -- "a patient medical record, or
14 medical claims record of an agency employee, a
15 former agency employee, or an eligible dependent."
16 So what about medical --

17 MS. PETERSON: This is in the hands of a
18 government agency, so not your doctor, not your
19 hospital.

20 MS. GRINSTEAD: Not for an individual citizen?

21 MS. PETERSON: Not for an individual citizen.

22 And I'd say cite the statutes, but the citation

23 that was in your original bill applied only to

24 state agencies, the citation, the actual statutory

25 provision. And this is broader than that. So I

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1 thought that that was an error, and I didn't have
2 time to go in and get the actual statutory
3 citations. But there is a statutory citation. Any
4 other questions? Comments?

5 Is it too much to digest this late in the
6 afternoon? You might want to think about it and
7 consider it for October?

8 MS. LEE: This is -- the Fair Credit Reporting
9 Act, it kind of reminds me of -- it follows that
10 kind of process. You get the right to review your
11 credit report. If you see some errors, you can
12 correct it and challenge it but --

13 MS. PETERSON: Right.

14 MS. LEE: Okay.

15 MS. PETERSON: And the Fair Information
16 Practices Act came out of all these data protection
17 statutes, and I think it actually started in the
18 late 80s. And a fair number of states -- I don't
19 have an exact number -- have adopted similar

20 legislation and the idea, again, is data

21 protection.

22 So we'll put that -- please review it and

23 think about it. If you have any questions, direct

24 them to JoAnn, and then we will consider that at

25 the October meeting. That's pretty clear language

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1 and we'll leave that one.

2 Okay. That moves us on to the Legislature.

3 So we had two recommendations, and we've had

4 actually a lot of testimony. We recently

5 received -- and I don't know if that's in the

6 packet the letter from Fort Walton County

7 Commission just adopted a resolution, requesting

8 the Legislature comply with the Sunshine Law, the

9 Public Records Law. And if you remember, we had

10 quite a bit of testimony. We had some very

11 articulate, thorough testimony from House Minority

12 Leader, Dan Gelber. We had testimony from

13 Representative Weatherford. Senator Dockery gave

14 us a lot of information.

15 And what Representative Gelber recommended was

16 that we ask the House and the Senate to sort of fix

17 their rules. That's all we can do. There's

18 separation of powers issues, but that they adopt

19 rules regarding access to legislative records, and

20 I should say meetings in there too, that are more
21 in compliance with the general policies under
22 Florida's Open Government Laws. We have -- the
23 Legislature is subject to the public records
24 provision under Article One, Section 24. They're
25 allowed to adopt their own rules. They have a

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1 constitutional provision in Article 3, Section 4(e)
2 that allows for access to meetings of three or more
3 members of the Legislature prearranged gatherings.
4 It's a much lower standard than Florida's Sunshine
5 Law requires state agencies and local governments.
6 To amend Article 3, Section 4(e) would require a
7 joint resolution.

8 Representative Gelber's recommendation was
9 that we ask them to adjust their rules and policies
10 to more closely follow the standard required of the
11 executive branch of local government. And if that
12 doesn't happen, to come back later and suggest
13 constitutional revision. And as we talked about,
14 getting a joint resolution is no easy thing. And
15 amending the constitution is a huge issue. So my
16 suggestion is that we follow his recommendation and
17 that we ask the Legislature to review their rules
18 and policies and to adopt rules regarding access to
19 legislative records and meetings, that more closely

20 comport with general policy under Florida's Public

21 Records and Open Meetings Laws. Questions?

22 I was very interested in this letter from Fort

23 Walton where they adopted their resolution,

24 supporting an amendment to Florida's Constitution

25 to require the Legislature to operate under

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1 Florida's Sunshine Laws.

2 MR. D'ALEMBERTE: I'm really worried about
3 going into the constitutional amendment business.

4 I think we're just spinning our wheels. My
5 recommendation is asking the Legislature to review
6 it. If Dan Gelber suggested they take a look at
7 it, my guess is it would not be offensive.

8 SENATOR DOCKERY: I think that it's totally
9 appropriate for this Commission on Open Government
10 to suggest to the Legislature that they look at
11 their rules and see if they can come more in
12 compliance. The question is, do you leave it up to
13 each individual body so that the Senate may say
14 yes, and the House may say no. Do you ask them to
15 jointly do it? Probably the best to do is -- just
16 the least obtrusive would be leave it up to the
17 leader of each chamber, and, you know, they can do
18 what they want once it gets there.

19 The constitutional amendment, I think, there's

20 just too many problems there. But had we been
21 serious about that, the time to have done that
22 would have been before the Budget and Taxation
23 Commission, which would have been a little
24 independent from the Legislature. And getting that
25 through the Legislature is probably not going to

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1 happen. And if it's done in the rules, then you've
2 accomplished your task anyway.

3 MS. PETERSON: And that was, as I said,
4 Representative Gelber's suggestion. Give them the
5 opportunity first, and if it doesn't happen, then
6 come back and see about a constitution amendment.

7 SENATOR DOCKERY: So I'll move the motion.

8 MS. PETERSON: Okay. Do we have a second?

9 MR. D'ALEMBERTE: Second.

10 MS. CARRIN: Carassas?

11 JUDGE CARASSAS: Yes.

12 MS. CARRIN: D'Alemberte?

13 MR. D'ALEMBERTE: Yes.

14 MS. CARRIN: Dockery?

15 SENATOR DOCKERY: Yes.

16 MS. CARRIN: Grinstead?

17 MS. GRINSTEAD: Yes.

18 MS. CARRIN: Lee?

19 MS. LEE: Yes.

20 MS. CARRIN: Peterson?

21 MS. PETERSON: Yes.

22 So we will recommend -- suggest to the House

23 that they -- and Senate. Okay. Again, I'll get

24 some help with wordsmithing this.

25 Two issues that have been deferred and another

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1 issue that, actually, wasn't on there, but I'm not
2 sure we necessarily need it. Did somebody have a
3 question? Okay. The clemency provision. We
4 agreed yesterday that we would, at least, adopt the
5 Governor's rule change, recommend that we amend the
6 clemency -- amend the statutes regarding clemency
7 proceedings as to petitioner. We left the question
8 whether we expand the policy to allow public access
9 to the clemency report. So it would be a right of
10 general access to the clemency report, rather than
11 just the petitioner. We left that question open.

12 Do we have any discussion of it?

13 Senator?

14 SENATOR DOCKERY: Yesterday, I was questioning
15 whether or not we should do it to the victim. And
16 I think that, because that really is something that
17 needs a lot more discussion, that we should leave
18 it for the petitioner only at this point. And if
19 the recommendation is made to the Legislature when

20 they open up the issue in the form of a bill,
21 that's when it can get modified to other persons.
22 But I hate to put this forward including victims,
23 have us find out there's problems with that and
24 then it kills the whole recommendation.

25 MS. PETERSON: So, perhaps, what we do is --

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1 let me see -- word our recommendation to say that
2 "We amend the statute regarding clemency
3 proceedings to all allow access to the clemency
4 report by the petitioner and suggest that the
5 Legislature review the policy to see if a greater
6 right of access," or just leave it alone?

7 SENATOR DOCKERY: I would just leave it alone
8 and do "the petitioner."

9 MS. PETERSON: And I can make the
10 conclusion -- one of the conclusions could be that
11 we considered this and didn't have enough
12 information about the ramifications.

13 MR. D'ALEMBERTE: And you'd put that in the
14 report?

15 MS. PETERSON: We'd put that in the report as
16 a conclusion that we didn't have sufficient --

17 SENATOR DOCKERY: On a legal question, would
18 you need to say "the petitioner and/or his
19 counsel"? Or "and his counsel"? Or would

20 "petitioner" cover counsel?

21 MS. PETERSON: "Petitioner and/or his

22 counsel."

23 SENATOR DOCKERY: We want the petitioner to

24 have it.

25 MS. PETERSON: And legal -- okay. So I'll put

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1 the rest, the expansion -- and then I'll put the
2 remainder of that in the conclusion simply so it's
3 in the report, let the Legislature and everyone
4 else know that we looked at it and we simply didn't
5 have enough information. Okay.

6 Then the second oh -- we need to vote?

7 JUDGE CARASSAS: We voted yesterday on --

8 MS. PETERSON: We voted yesterday on adopting
9 the Governor's language. We did vote on that
10 yesterday. Let's make sure, but I'm fairly --

11 MS. CARRIN: You're right.

12 MS. PETERSON: We didn't change it. We talked
13 about changing it for a minute and we didn't.

14 We're going to put in a conclusion. Yes, we voted
15 on it.

16 The second one we deferred yesterday was the
17 social security number exemption. We almost have
18 to have a blackboard and a chart to figure out the
19 social security. We already agreed to go in and

20 deal with the redundant exemptions and recommend
21 repeal of those that can be repealed. We're now
22 talking specifically about the distinction under
23 the general exemption or the social security
24 numbers of government employees verses
25 nongovernment employees. And the recommendation

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1 was that we amend the exemption to allow -- the
2 exemption remains in place. There is a general
3 exemption, that we amend the exception to the
4 exemption -- and actually, it would be repealed;
5 one of the two exceptions to the exemption, if I'm
6 right, that specifically applies to government
7 employees.

8 The way it's worded is all social security
9 numbers are exempt from public disclosure, except
10 that, one, commercial entities get access. If it's
11 my number, they get the whole number; if it's the
12 Judge's number, they only get the last four digits.

13 More or less. It's late and I do need a blackboard
14 to chart this out. It's very, very complicated.

15 What we're suggesting, or the recommendation before
16 us is, everybody is on a level playing field. The
17 number is exempt, except that commercial entities
18 with a legitimate commercial purpose, who put their
19 request in writing, who state the purpose of their

20 request, they verify they are who they say they

21 are, get the social security number.

22 MS. CARRIN: The posture we left this in

23 yesterday was that Commissioner Carassas made a

24 motion, there was no second, and then there was a

25 request to temporarily pass it. So there is a

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1 pending motion, awaiting a second.

2 MS. PETERSON: And seriously, if we're too
3 tired to deal with this, I can chart it out for you
4 and put it in writing for you, and we can consider
5 it after you've had time to really look at it and
6 think about it. We can consider it in October.

7 SENATOR DOCKERY: Question?

8 MS. PETERSON: Yes, ma'am.

9 SENATOR DOCKERY: Since this deals with an
10 exemption, what type of vote does it need?

11 MS. PETERSON: Simple majority because it's
12 not expanding an exemption.

13 SENATOR DOCKERY: Well, let me tell you where
14 I am, and then I'd like to hear where other board
15 members are. I agree they shouldn't be treated
16 differently. But I would be inclined to make them
17 all four digits instead of all seven digits.
18 Because in my gut, I just hate social security
19 numbers out there floating around. If the rest of

20 the Committee feels strongly that this was
21 something they want to do, you know, that's fine.
22 I don't know that we need to hold it up. I think
23 we all understand the issue pretty well.
24 MS. CARRIN: I have one correction. Sorry.
25 It was Jeanne that made the motion yesterday, not

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1 Commissioner Carassas. Sorry.

2 MS. PETERSON: And that's what I think we
3 might need. My feeling, from what I know and
4 having gone through I don't know how many meetings
5 on this issue, by limiting commercial entities only
6 to the last four digits has serious implications on
7 the ability for identity verification. And many of
8 these commercial entities getting access to these
9 numbers are actually providing vital services of
10 government. For example, LexisNexis uses the
11 social security number to help with child support
12 enforcement. They are actually the ones who
13 compile information and provide that information to
14 the government. And we have pretty strong
15 testimony that they can't do that without access to
16 the entire number.

17 And I will say that we have not, in my
18 knowledge, and I have sat through -- because we did
19 this back when exemption was first created; then we

20 had the modification to the exemption; then we had
21 the Sunset Review of the exemption, so I have had
22 quite a bit of exposure to the discussion of this
23 issue. We do not have any recorded incidence of
24 anybody using a social security number obtained
25 under the exception to the exemption for the

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1 purposes of identity theft or any other crime.
2 It's pretty -- we have a record of who is
3 requesting those social security numbers, because
4 they have to put their request in writing, they
5 have to verify that they are -- and it's a
6 notarized statement. It's not a simple statement.
7 They actually have to have a notarized statement
8 saying so -- that the protections that are in place
9 under current law are pretty stringent.

10 MR. D'ALEMBERTE: I like the idea of putting
11 this off.

12 MS. PETERSON: Okay. What I will do --
13 because that will also give me the opportunity to
14 finish that section of the report, so I can state
15 things clearly and I promise to give you a map.

16 MR. D'ALEMBERTE: My instinct is with Senator
17 Dockery, but I would not want to destroy the
18 possibility of those functions proceeding.

19 MS. PETERSON: So we'll have a -- and in the

20 meantime, be able to provide you with much more
21 information. Because I do think -- as I said, I
22 understand the, sort of, the instinct to, sort of,
23 protect the number. But I was pretty strongly
24 persuaded that to do so would seriously curtail,
25 not only certain government programs and services,

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1 but also it would have an affect on commerce in the
2 State of Florida. And we don't want to affect
3 commerce any more than it's already affected. So
4 we will, with the promise of giving you a diagram
5 and more information at the October meeting, we
6 will put off that discussion until October.

7 There was one other thing and it's a slight
8 thing, but it has -- somebody reminded me of it
9 yesterday, and it was not included on the list of
10 recommendations. And that was consideration of
11 asking or requiring -- recommending that the
12 Department of State, which has statutory fee
13 authority under Chapter 257 regarding the retention
14 and maintenance of public records, recommending
15 that the Department of State adopt a model rule for
16 access to public records, that would, then, serve
17 as a model that could be adopted or used by any
18 government agency in the State of Florida. It
19 would be, again, just a model rule and they have

20 that authority under chapter 257. It was a
21 recommendation before the Legislature a number of
22 years ago in a larger bill, but that was the last
23 recommendation from -- that came to me yesterday
24 and it was not included on our list.
25 It's a recommendation for adoption of a model

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1 rule. Does not require any agency to adopt the
2 rule, but it would sever as a standard. And the
3 Bureau of Archives and Records Management, under
4 the Department of State, has significant
5 experience. And, as Mr. Hines was referring to
6 their rule regarding archived records, they're
7 very, very good at this sort of thing. And that
8 was the last recommendation we had.

9 MR. D'ALEMBERTE: And I just had a comment.
10 That you were going to put something in the report
11 about the JQC and the JNC?

12 MS. PETERSON: Absolutely.

13 MS. CARRIN: There are a couple of issues that
14 will be deferred until October, and I'll go over
15 those when we're finished with this issue.

16 MS. PETERSON: So do we have a motion to
17 accept model rule, Department of State, Bureau of
18 Archives and Records Management?

19 MR. D'ALEMBERTE: (Indicating.)

20 MS. PETERSON: Sandy moves. Do we have a

21 second?

22 MS. LEE: Second.

23 MS. CARRIN: Carassas?

24 JUDGE CARASSAS: Yes.

25 MS. CARRIN: D'Alemberte?

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1 MR. D'ALEMBERTE: Yes.

2 MS. CARRIN: Dockery?

3 SENATOR DOCKERY: Yes.

4 MS. CARRIN: Grinstead?

5 MS. GRINSTEAD: Yes.

6 MS. CARRIN: Lee?

7 MS. LEE: Yes.

8 MS. CARRIN: Peterson?

9 MS. PETERSON: Yes.

10 I can't believe it but --

11 MS. CARRIN: The issues that have been

12 deferred -- I am so pleased. You guys did a great

13 job. There are just a couple of things we did

14 defer for October: social security number issue;

15 along with that, goes the unique identifier,

16 because those are part of the same conversation;

17 then, there's the Fair Information Practices Act;

18 economic development, because we are going to work

19 on something in the interim; and then on the JQC

20 and JNC, you wanted Barbara to put something just
21 in the report.

22 MR. D'ALEMBERTE: Yeah.

23 MS. PETERSON: Sandy provided me with the
24 statutory -- the constitutional -- the JQC, their
25 proceedings and records are exempt under the

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1 Constitution. And I will put it in the report.

2 And the JNC, the records are open but the
3 proceedings are closed.

4 Is that correct?

5 MR. D'ALEMBERTE: No. The proceedings --
6 except for the deliberations of the JNC,
7 proceedings of the Commission and their records are
8 open to the public. So when they're discussing
9 nominations, that's closed meeting. But everything
10 else is open meeting, and all their records are
11 open meeting. And I'm really troubled by past
12 practices, which have been people shredding
13 documents, which is just a total violation of the
14 Public Records Law.

15 MS. PETERSON: So I'm going to put that in
16 the -- I'll include that in the report.

17 MS. CARRIN: But it's not a recommendation?

18 MS. PETERSON: It's not a recommendation
19 because it's already in the Constitution.

20 MR. D'ALEMBERTE: It's already in the
21 Constitution. And my recommendation, don't fool
22 with the JQC. It can get too complicated, trying
23 to carry a constitutional amendment. There was an
24 amendment for the JQC, a constitutional amendment,
25 I think in 1998, and I think we might want to look

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1 at it again. And Judge says he didn't want to have
2 anything to do with them at all.

3 MS. PETERSON: So with that--

4 SENATOR DOCKERY: And Madam Chair?

5 MS. PETERSON: Yes, ma'am?

6 SENATOR DOCKERY: On the economic development
7 aspect, staff is going to -- the Government
8 Operations staff is going to help draft something,
9 and it would be my intention that we get something
10 mailed out to Commission members, like in
11 September, so you have time to review it before
12 October. Because I think if we bring it to you in
13 October, it won't be very well thought out.

14 MS. PETERSON: And before you returned, I
15 announced to the Commission that I asked the
16 National Freedom of Information Coalition if they
17 had any information about what other states do, and
18 they actually have a report on the issue that they
19 emailed me. And I will email it to JoAnn, and

20 she'll get it out to the members.

21 So we're coming into the end here. And --

22 Yes, Judge Carassas?

23 JUDGE CARASSAS: Before we move to rise, we

24 saved the thank-yous to the end. I want to say

25 thank you. Everybody has worked very hard.

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1 Starting with Madam Chair, you did an
2 excellent job in putting that report together. I
3 know you will continue to do so on our behalf. We
4 appreciate that. JoAnn, thank you for everything
5 your staff has done for us. You've really done a
6 wonderful job. Jessica back here, thank you for
7 everything. Paige is also here from your office.
8 Thank you very much. And Lisa, our court reporter.
9 Let's give this lady a hand. Thank you very much.

10 And with that, move to rise.

11 (Whereupon, the proceedings were concluded at
12 3:35 p.m.)

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1 **CERTIFICATE OF REPORTER**

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5 I, LISA A. BABCOCK, do hereby certify that I
6 was authorized to and did report the foregoing
7 proceedings, and that the transcript, pages 372 through
8 483, is a true and correct record of my stenographic
9 notes.

10

11 Dated this 11th day of September, 2008, at
12 Tallahassee, Leon County, Florida.

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LISA A. BABCOCK

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Court Reporter

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