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# Office of the Manatee County Attorney

*Presents:*

*Local Government Law Seminar*

*June 9, 2014*

*Bradenton, Florida*

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The Manatee County Attorney's Office

presents

## Local Government Law Seminar

June 9, 2014

1:00 p.m. to 5:00 p.m.

Manatee County Administration Building  
County Commission Chambers – 1<sup>st</sup> Floor  
1112 Manatee Avenue West  
Bradenton, Florida 34205

### Seminar Program

- Welcome and Introduction ..... 1:00 p.m. - 1:10 p.m.  
Mitchell O. Palmer, County Attorney
- Government-in-the-Sunshine..... 1:10 p.m. - 2:00 p.m.  
Maureen S. Sikora, Assistant County Attorney
- Public Records Law for Elected and Appointed Officials ..... 2:00 p.m. - 2:50 p.m.  
Robert M. Eschenfelder, Assistant County Attorney
- Break ..... 2:50 p.m. - 3:00 p.m.
- Lawful and Unlawful Expenditures of Public Monies ..... 3:00 p.m. - 3:50 p.m.  
William E. Clague, Assistant County Attorney
- Break ..... 3:50 p.m. - 4:00 p.m.
- Ethics for Elected and Appointed Officials ..... 4:00 p.m. - 4:50 p.m.  
Mitchell O. Palmer, County Attorney  
Robert M. Eschenfelder, Assistant County Attorney
- Closing Comments ..... 4:50 p.m. - 5:00 p.m.  
Mitchell O. Palmer, County Attorney



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May 23, 2014

<b>Reference Number:</b> 1403832N
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<b>Level:</b> Basic
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### CLE Credits

General	5.0
Ethics	1.0

### Certification Credits

Please provide the attendees the above reference number so they may go online to [www.floridabar.org](http://www.floridabar.org) to report their completion of this program.

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**GOVERNMENT-IN-THE-SUNSHINE LAW**

# GOVERNMENT – IN – THE – SUNSHINE LAW

## OPEN MEETINGS

- I. SCOPE
- II. ENTITIES / AGENCIES
- III. MEETINGS / COMMUNICATIONS
- IV. EXEMPTIONS
- V. PROCEDURAL REQUIREMENTS
- VI. CONSEQUENCES / PENALTIES

# GOVERNMENT-IN-THE-SUNSHINE LAW

## OPEN MEETINGS

### I. SCOPE

Article I, Section 24, Florida Constitution, which was approved by Florida voters in 1992 and became effective July 1, 1993, requires almost all meetings of public bodies in the state, except those of the Legislature and the courts, to be noticed and open. (The Legislature and the courts are addressed by other sections of the Constitution.)

Further, the Florida Government-in-the-Sunshine Law, as set forth primarily in Sec. 286.011, Fla. Stat., is a statutory provision that assures access by the public to governmental proceedings at the state and local levels. Section 286.011, Florida Statutes, contains three basic requirements:

- A. Meetings of public boards or commissions must be open to the public;
- B. Reasonable notice of such meetings must be given; and
- C. Minutes of the meetings must be taken and promptly recorded and open to public inspection.

The purpose of the open meetings law has been stated as follows:

To prevent at non-public meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. . . . The statute should be construed so as to frustrate all evasive devices. Town of Palm Beach v. Gradison, 296 So. 2d 473, 477 (Fla. 1974).

Florida courts have broadly construed the Sunshine Law to effect its remedial and protective purposes. See, Wood v. Marston, 442 So. 2d 934 (Fla. 1983); Canney v. Board of Public Instruction of Alachua County, 278 So. 2d 260 (Fla. 1973).

### II. ENTITIES / AGENCIES

Section 286.011(1), Florida Statutes, provides as follows:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, . . . , at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

The courts have stated that it was the intent of the Legislature for the Sunshine Law to apply to "every board or commission of the state, or of any county or political subdivision over which it has dominion or control." Times Publishing Company v. Williams, 222 So. 2d 470, 473 (Fla. 2d DCA 1969), overruled in part, Neu v. Miami Herald Publishing Company, 462 So. 2d 821 (Fla. 1985). "All governmental entities in Florida are subject to the requirements of the Sunshine Law unless specifically exempted." Sarasota Citizens for Responsible Government v. City of Sarasota, 48 So. 3d 755, 762 (Fla. 2010).

- A. Board of County Commissioners

Upon giving due public notice, regular and special meetings of the board may be held at any appropriate public place in the county. Sec. 125.001, Fla. Stat. Actions of the board taken at other than a public place in the county are ineffective. Due public notice of regular and special meetings must be given

for the public place chosen.

The legislative and governing body of the county has the power to carry on county government and to adopt rules of procedure, select officers, and set the time and place of official meetings. Sec. 125.01(1)(a), Fla. Stat. No express authority is provided for the members of a local board to hold meetings by conference call or telephone hookup. Op. Atty. Gen. Fla. 10-34 (2010) determined that a city may not adopt an ordinance allowing the members of a city board to appear by electronic means for the purpose of constituting a quorum. However, if a quorum of a local board is physically present at the public meeting site, the board may permit a member with health problems to attend through the use of speaker telephone that allows the absent member to participate in debate, to be heard by other members and the public, and to hear discussions taking place during the meeting. Op. Atty. Gen. Fla. 92-44 (1992) concluded that a dual television communication link with an ill county commissioner might meet the statutory requirement provided that a legal quorum of the commission met at a public place in the county. See also, Op. Atty. Gen. Fla. 94-55 (1994) (out-of-state board of trustee member allowed to participate in museum board meeting).

The Manatee County Board of County Commissioners has adopted rules governing the conduct of its meetings. These rules should be consulted when appearing at board meetings.

#### B. Other Public Agencies

Advisory boards whose duties and powers are limited to making recommendations to the Board of County Commissioners are also subject to the Sunshine Law, even if the advisory board's decisions and opinions are not binding on the county. Town of Palm Beach v. Gradison, supra. The nature of the act being performed by the board, not its makeup or proximity to the ultimate decision, is the key factor in determining whether the law applies to the advisory board. Wood v. Marston, supra. Members of such advisory groups are governed by the same requirements as members of elected boards: meetings must be open to the public; notice must be provided; and minutes must be kept.

Meetings held by any board, committee or agency elected or appointed under the authority of the Board of County Commissioners, including members-elect or members-designate, must comply with Sec. 286.011, Fla. Stat. Important questions are whether there has been a delegation of the county's governmental or legislative function or the commission's decision-making process. If so, a Sunshine Law meeting is required.

The following advisory boards have been found to be covered by the open meetings law:

1. Ad hoc committee appointed by the mayor to meet with the chamber of commerce to discuss proposed transfer of city property. Op. Atty. Gen. Fla. 87-42 (1987).
2. Land selection committee appointed by a water management district to evaluate projects for acquisition. Op. Atty. Gen. Fla. 86-51 (1986).
3. Citizens advisory committee of the metropolitan planning organization. Op. Atty. Gen. Fla. 82-35 (1982).
4. Central Florida Commission on the Status of Women appointed to make recommendations to several county commissions. Op. Atty. Gen. Fla. 76-193 (1976).
5. Commission established by county ordinance to make recommendations on criminal justice issues. Op. Atty. Gen. Fla. 93-41 (1993).
6. County personnel council created to hear appeals of disciplinary actions. Op. Atty. Gen. Fla. 77-132 (1977).

7. Civil service board for county sheriff's office. Op. Atty. Gen. Fla. 80-27 (1980).
8. Ad hoc committee appointed by the mayor to make recommendations concerning legislation. Op. Atty. Gen. Fla. 85-76 (1985).
9. Citizen advisory committee appointed by the city council to make recommendations regarding city government and city services. Op. Atty. Gen. Fla. 98-13 (1998).
10. Citizen planning committee appointed by the city council to assist in revision of zoning ordinances. Town of Palm Beach v. Gradison, *supra*.
11. Site plan review committee created by the county commission to serve in an advisory capacity to the county manager. Lyon v. Lake County, 765 So. 2d 785 (Fla. 5th DCA 2000).
12. Political forum attended by two or more county commissioners who discuss among themselves issues on which foreseeable action may be taken by the commission could be considered a Sunshine Law meeting. Op. Atty. Gen. Fla. 94-62 (1994). But see, Op. Atty. Gen. Fla. 92-5 (1992) (different result where meeting included one incumbent and one non-incumbent person for political office who had not been elected).

A limited exception to Sec. 286.011, Fla. Stat., exists for advisory committees established solely for fact-finding or information-gathering purposes with no power to make recommendations. For example, a committee appointed to report on employee working conditions was not subject to the Sunshine Law. Bennett v. Warden, 333 So. 2d. 97 (Fla. 2nd DCA 1976); see also, Sarasota Citizens for Responsible Government v. City of Sarasota, *supra*. The fact-finding exception is restricted to advisory committees, and does not apply to boards that have the ultimate decision-making authority. Finch v. Seminole County School Board, 995 So. 2d 1068 (Fla 5th DCA 2008).

#### C. Private Organizations

As a general rule, private organizations are not subject to the requirements of Sec. 286.011, Fla. Stat., unless such organization has been created by a public entity, has been delegated the authority to perform some governmental function, or plays an integral part in the decision-making process of a public entity. Op. Atty. Gen. Fla. 07-27 (2007). The Sunshine Law ordinarily does not apply to meetings of a homeowners association board of directors or a mobile home park board of directors.

Private corporations and organizations may be bound by the Sunshine Law, although such a finding requires more than receipt of funds from a governmental agency or provision of services to a governmental agency. The determination involves whether the private entity was created by law or a public agency and whether the private entity is acting on behalf of a governmental agency in the performance of public duties. For instance, an architectural review committee of a homeowners association which, pursuant to county ordinance, must review and approve applications for building permits must follow the requirements of Sec. 286.011, Fla. Stat. Op. Atty. Gen. Fla. 99-53 (1999).

In determining which private entities may be covered by Sec. 286.011, Fla. Stat., the courts have held that the Legislature intended to bind "every board or commission of the state, or of any county or political subdivision over which it has dominion and control." Times Publishing Company v. Williams, *supra* at 473. The Attorney General's Office has advised that a not-for-profit corporation created by a city redevelopment agency to assist in the implementation of the city's redevelopment plan must comply with the Sunshine Law. Op. Atty. Gen. Fla. 97-17 (1997). Accord, Keesler v. Community Maritime Park Associates, Inc., 32 So. 3d 659 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1289 (Fla. 2010). Similarly, a nonprofit corporation created by a county to act as a county instrumentality and for its benefit in financing and administering governmental programs is subject to the law. Op. Atty. Gen. Fla. 94-34 (1994).

Another test to determine whether the open meetings laws apply to a private entity focuses on whether the private entity is merely providing services or "is standing in the shoes of the public agency." Op. Atty. Gen. Fla. 98-21 (1998). The Attorney General's Office has concluded that a not-for-profit corporation that contracted with a city to carry out affordable housing responsibilities and also reviewed and screened applicant files is an agency for purposes of the Sunshine Law. Op. Atty. Gen. Fla. 08-66 (2008). In addition, a direct-support organization created as a private nonprofit corporation for the purpose of assisting a public museum is required to follow Sec. 286.011, Fla. Stat. Op. Atty. Gen. Fla. 92-53 (1992). If a county commission dissolves its cultural affairs council and designates a nonprofit organization to fulfill that responsibility for the county, the organization would be bound by the Sunshine Law because the nonprofit entity would be providing services in place of the county council and would receive public funding formerly provided to the council for the same purpose. Op. Atty. Gen. Fla. 98-49 (1998). The Sunshine Law applies to a private economic development entity when there has been a delegation of the public agency's authority to conduct public business such as implementing the county's economic development strategic plan. Op. Atty. Gen. Fla. 10-30 (2010).

#### D. Staff

Meetings of staff of boards and commissions covered by the Sunshine Law are generally not subject to Sec. 286.011, Fla. Stat. School Board of Duval County v. Florida Publishing Company, 670 So. 2d 99 (Fla. 1st DCA 1996). The court in Sarasota Citizens for Responsible Government v. City of Sarasota, *supra*, held that discussions among the deputy county administrator, staff and consultants in negotiating with a baseball team did not violate the Sunshine Law based on the informational role of the negotiating team. However, if a staff member is appointed to a committee which is delegated authority to make recommendations to or act on behalf of a board or official, the Sunshine Law applies to the committee. When public officials delegate their decision-making authority to a committee of staff members, those individuals no longer function as staff but "stand in the shoes of such public officials" as far as the Sunshine Law is concerned. Evergreen the Tree Treasurers of Charlotte County, Inc. v. Charlotte County Board of County Commissioners, 810 So. 2d 526, 531-532 (Fla. 2d DCA 2002).

Wood v. Marston, *supra*, held that a committee composed of staff created for the purpose of screening applications and making recommendations for the position of law school dean must comply with Sec. 286.011, Fla. Stat., because the committee performed a policy-based, decision-making function delegated to it by the president of the university. See also, Dascott v. Palm Beach County, 877 So. 2d 8 (Fla. 4th DCA 2004) (meeting of pre-termination conference panel established pursuant to county ordinance and delegated authority for employee discipline is subject to Sunshine Law). The Attorney General's Office has found the Sunshine Law applicable to a three-member panel appointed by the city manager to hold post-termination hearings, Op. Atty. Gen. Fla. 07-54 (2007), an employee advisory committee authorized to make recommendations to the governing board, Op. Atty. Gen. Fla. 96-32 (1996), and a staff grievance committee created to make nonbinding recommendations to the county administrator regarding disposition of employee grievances, Op. Atty. Gen. Fla. 84-70 (1984).

In Silver Express Co. v. District Board of Lower Tribunal Trustees, 691 So. 2d 1099 (Fla. 3d DCA 1997), the court decided that a committee comprised of staff and one outside person created by a college purchasing director to assist and advise in evaluating contract proposals was subject to the Sunshine Law. According to the court, the committee's job involved weeding through the various proposals, determining which were acceptable, and ranking them. This function brought the committee within the scope Sec. 286.011, Fla. Stat., because "governmental advisory committees which have offered up structured recommendations . . . which eliminate opportunities for alternative choices by the final authority, or which rank applications for the final authority – have been determined to be agencies governed by the Sunshine Law." 691 So. 2d at 1101. A similar conclusion was reached in Op. Atty. Gen. Fla. 05-06 (2005) concerning a city development review committee consisting of several city officials and representatives of various city departments to review and approve development applications.

### III. MEETINGS / COMMUNICATIONS

The law applies to any gathering of two or more members of the same public board or commission to discuss a matter on which foreseeable action will be taken by that board or commission. Sarasota Citizens for Responsible Government v. City of Sarasota, *supra*; Hough v. Stembridge, 278 So. 2d 288 (Fla. 3d DCA 1973). There is no requirement that a quorum of the board be present. The Sunshine Law extends to discussions and deliberations as well as formal action by a board or commission. Any gathering is covered, regardless of whether the meeting is formal or informal, or designated as a workshop, conference session, quasi-judicial hearing, or executive session. This includes an organizational session of a board. Ruff v. School Board of Collier County, 426 So. 2d 1015 (Fla. 2d DCA 1983).

Discussions not related to matters on which foreseeable action will be taken are not subject to the open meetings law. For example, discussions between two board members regarding how the Tampa Bay Buccaneers played are not covered by the Sunshine Law. However, the law would apply to discussions on county financing of a new stadium for the Tampa Bay Buccaneers, especially if the board could be expected in the foreseeable future to act on the matter.

Generally, discussions between a member of a board and staff or other non-member are not subject to the Sunshine Law, provided that the staff or non-member is not being used as liaison or conduit among board members. See, Blackford v. School Board of Orange County, 375 So. 2d 578 (Fla. 5th DCA 1979). Op. Atty. Gen. Fla. 74-47 (1974) advised that a city manager may meet with individual members of a city council, but may not act as a liaison by circulating information and thoughts of council members. In Sarasota Citizens for Responsible Government v. City of Sarasota, *supra*, the court found no violation of the law where staff members met privately with individual commissioners in preparation for a public hearing on a memorandum of understanding because the meetings were informational briefings regarding the contents of the document and there was no evidence that staff communicated any statements from one commissioner to another.

Under Sec. 286.011, Fla. Stat., members of a board or commission may not take action or engage in private discussions by written correspondence, e-mails or other electronic communications. The open meetings law does not prohibit a city commissioner from sending documents to other members of the commission on matters coming before the commission for official action, as long as there is no response from or interaction among the commissioners prior to the public meeting. Op. Atty. Gen. Fla. 07-35 (2007). In such cases, the records are subject to disclosure under the Public Records Act and are not being used as a substitute for action at a public meeting because there is no interaction among commissioners prior to the meeting. Op. Atty. Gen. Fla. 89-23 (1989).

However, if a report is circulated among board members for comments and comments are provided to other members, such interaction must occur in compliance with the Sunshine Law. Op. Atty. Gen. Fla. 90-3 (1990). Use of computers by members of a public board or commission to communicate among themselves on issues pending before the board would also constitute a violation of the Sunshine Law. Op. Atty. Gen. Fla. 89-39 (1989). While a city commissioner may use a website blog or message board to post a comment about city business, any subsequent postings by other commissioners on the subject of the initial blog may be construed as a response which is subject to the Sunshine Law. Op. Atty. Gen. Fla. 08-07 (2008). Members of a city board or commission may not engage on the city's Facebook page in an exchange or discussion of matters that foreseeably will come before the board or commission for official action. Op. Atty. Gen. Fla. 09-19 (2009). In addition, Op. Atty. Gen. Fla. 01-21 (2001) expressed concern about board members distributing their own position papers on the same subject to other members outside of a duly noticed meeting.

Section 286.011, Florida Statutes, prohibits members of a public board or commission from discussing by telephone matters which foreseeable will come before that board or commission for action. But see, Op. Atty. Gen. Fla. 98-28 (1998) (authorizing a board to use electronic media technology to allow a member of the board who is absent to attend the meeting). If a quorum of the local board is physically present, the participation of an absent member by telephone conference or other interactive electronic

technology is permissible when the absence is due to extraordinary circumstances such as illness. Op. Atty. Gen. Fla. 03-41 (2003).

The Attorney General's Office has advised that local boards may use electronic media technology such as video conferencing and digital audio to conduct informal discussions and workshops over the Internet, provided that proper notice is given and interactive access is afforded to members of the public. Op. Atty. Gen. Fla. 01-66 (2001). However, the use of electronic media technology does not satisfy quorum requirements necessary for official action to be taken by local boards. Op. Atty. Gen. Fla. 06-20 (2006).

Although the open meetings law does not normally encompass an individual member of a public board or commission or public officials who are not commission members, situations may arise where a board delegates its decision-making power to a single member or a non-member is used as a liaison among board members. In such circumstances, compliance with Sec. 286.011, Fla. Stat., is mandatory. For example, when a board member gathers information or acts as a fact-finder, the law does not apply. Op. Atty. Gen. Fla. 95-06 (1995). If a member of a public board is authorized to explore various contract proposals which are reported back to the governing body for consideration, the discussions between the board member and the individual are not subject to the Sunshine Law. Op. Atty. Gen. Fla. 93-78 (1993).

By contrast, if a board member has been delegated the authority to reject certain options from consideration by the entire board, the board member is performing a decision-making function that must be conducted in accordance with Sec. 286.011, Fla. Stat. Op. Atty. Gen. Fla. 95-06 (1995). In Leach-Wells v. City of Bradenton, 734 So. 2d 1168 (Fla. 2d DCA 1999), the city clerk tallied the results of evaluations by committee members charged with reviewing proposals and ranked the results. The court held that the short-listing constituted formal action that was required to be taken at a public meeting. The delegation of decision-making authority extends to actions such as negotiating the terms of a lease, Op. Atty. Gen. Fla. 84-54 (1984), or conducting a hearing or investigatory proceeding, Op. Atty. Gen. Fla. 75-41 (1975), on behalf of the board.

Non-members of a board acting as liaisons among board members would also violate the Sunshine Law. In Blackford v. School Board of Orange County, *supra*, the court ruled that a series of meetings between staff and board members held in rapid-fire succession to avoid public airing of a controversial problem amounted to a *de facto* meeting of the school board in violation of Sec. 286.011, Fla. Stat. Administrators and department heads should refrain from contacting members of a board to ascertain their position or vote on a matter that will foreseeably be considered by the board. *See*, Op. Atty. Gen. Fla. 89-23 (1989).

Section 286.011, Florida Statutes, includes meetings with or attended by any person elected to a board or commission, but who has not yet taken office. Thus, Sunshine Law requirements apply to discussions between members and members-elect and among members-elect of boards and commissions. *See*, Hough v. Stembridge, *supra*. Exceptions to this rule exist for a retiring member and a member-elect who will not serve together on the same board or council, Op. Atty. Gen. Fla. 93-04 (1993), and for candidates for office, unless the candidate is an incumbent seeking reelection, Op. Atty. Gen. Fla. 92-05 (1992).

The Sunshine Law does not apply to meetings between members of different boards, as long as one or more of the members has not been delegated authority to speak or act on behalf of that member's board. Rowe v. Pinellas Sports Authority, 461 So. 2d 72 (Fla. 1984). If an individual board member has been delegated authority to act for the board, any meeting the member has would be subject to the law. Op. Atty. Gen. Fla. 87-34 (1987) approved a private meeting between an individual city council member and a member of the municipal planning and zoning board to discuss a recommendation made by the board, provided no delegation of authority has been made and neither member was acting as a liaison.

County commissioners who are members of a regional planning council may take part in council meetings and express their opinions without violating the Sunshine Law. Op. Atty. Gen. Fla. 07-13 (2007). However, they should not discuss or debate such issues either as commissioners or as council members outside a public meeting. City commissioners are not prohibited from attending other city board meetings and commenting on agenda items that may subsequently come before the commission for final action, but they

may not discuss those issues among themselves. Op. Atty. Gen. Fla. 00-68 (2000).

Candidates' night forums sponsored by private civic clubs during which county commissioners express their positions on matters that may foreseeably come before the county are not governed by the open meetings law, as long as the commissioners avoid discussing these issues among themselves. Op. Atty. Gen. Fla. 94-62 (1994). This opinion cautioned public officials to avoid situations in which private political or community forums are used to circumvent the statutory requirements.

There is no Sunshine Law prohibition against members of the same public board or commission serving and participating in private organizations or meeting socially, as long as they do not discuss among themselves public board matters without satisfying Sec. 286.011, Fla. Stat. Op. Atty. Gen. Fla. 92-79 (1992); Op. Atty. Gen. Fla. 72-158 (1972). An Attorney General opinion advised that if a matter does come before the private organization which might be considered by the public board or commission, then one or both public members should excuse themselves from the private meeting. Alternatively, the meeting of the private organization should be conducted in compliance with the Sunshine Law. Op. Atty. Gen. Fla. 83-70 (1983). If a board member cannot determine whether a meeting is subject to Sec. 286.011, Fla. Stat., the member should either leave the meeting or ensure that the meeting complies with the law. See, Town of Palm Beach v. Gradison, supra.

#### **IV. EXEMPTIONS**

##### **A. Attorney-Client Discussions**

Meetings attended by any board or commission of any county, municipal corporation, or political subdivision, the chief administrator or executive officer of the governmental entity, and the entity's attorney to discuss pending litigation to which the entity is a party before a court or administrative agency, provided that the following conditions are met:

1. The attorney must advise the entity at a public meeting that the attorney desires advice concerning the litigation;
2. The subject matter of the meeting must be confined to settlement negotiations or strategy sessions relating to litigation expenditures;
3. The entire session must be recorded by a certified court reporter;
4. The court reporter's notes must be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting;
5. The entity must provide reasonable public notice of the attorney-client session and the names of persons attending the session;
6. The session must commence at an open meeting during which the chair must announce the commencement and estimated length of the attorney-client session;
7. At the conclusion of the session, the entity must reconvene the public meeting and the chair must announce the termination of the attorney-client session; and
8. The transcript must be made part of the public record upon conclusion of the litigation or administrative proceeding.

Sec. 286.011(8), Fla. Stat.

##### **B. Collective Bargaining Discussions**

All discussions between the chief executive officer of a public employer and the legislative body relative to collective bargaining. Sec. 447.605(1), Fla. Stat. Note that no exemption exists for negotiation meetings between the chief executive officer and the bargaining agent. Sec. 447.605(2), Fla. Stat.

**C. Risk Management Meetings**

Meetings and proceedings conducted pursuant to a risk management program administered by the state, its agencies or subdivisions relating to the evaluation of claims or offers of compromise of claims filed with the program. Sec. 768.28(16)(c), Fla. Stat.

**D. Competitive Solicitation Negotiations**

Any portion of a team meeting to discuss negotiation strategies, to conduct negotiations with a vendor, or at which a vendor makes an oral presentation or answers questions pursuant to a competitive solicitation, defined to include sealed bids, proposals or replies in accordance with a competitive process, regardless of the method of procurement, subject to the following requirements:

1. A complete record must be made of any exempt meeting;
2. The recording and any records presented at the exempt meeting are exempt until notice of the intended decision or 30 days after opening the bids, proposals or final replies, whichever occurs earlier; and
3. If all bids, proposals or replies are rejected and notice of intent to reissue a competitive solicitation is provided, the recording and any records presented at the exempt meeting remain exempt until notice of an intended decision concerning the reissued competitive solicitation or withdrawal of the reissued competitive solicitation, not to exceed 12 months after the initial notice rejecting all bids, proposals or replies.

Sec. 286.0113(2), Fla. Stat.

**E. Criminal Justice Commission Discussions**

Any portion of a criminal justice commission meeting when members discuss active criminal intelligence information or active criminal investigative information, provided that the commission members publicly disclose at the meeting the fact that such matters will be discussed. Sec. 286.01141, Fla. Stat.

**V. PROCEDURAL REQUIREMENTS**

Section 286.011, Florida Statutes, requires that reasonable notice must be given of all public meetings. In Op. Atty. Gen. Fla. 90-56 (1990), the Attorney General suggested the following guidelines for notice:

- A. The notice should contain the time and place of the meeting and an agenda or subject matter summation.
- B. The notice should be prominently placed in an area set aside for that purpose, such as the County Administration Building.
- C. Notice of regular meetings should be provided at least seven days prior to the meeting.
- D. Emergency sessions should be afforded the most appropriate and effective notice under the circumstances.

- E. Special meetings should have at least 24 hours reasonable notice to the public.
- F. Press releases and phone calls to newspapers and other media are encouraged.
- G. Advertising in local newspapers of general circulation is appropriate.
- H. Notice is required for meetings of board members even though a quorum is not present.
- I. If a meeting is adjourned and reconvened later to complete the business, the second meeting should also be noticed.
- J. Notice requirements imposed by other statutes, charters and codes must be strictly followed.

Use of the agency's website and e-mails for notices of public meetings are also encouraged. Op. Atty. Gen. Fla. 00-08 (2000). Section 286.0105, Florida Statutes, imposes additional requirements for notices of public hearings where a public board or commission acts in a quasi-judicial capacity or takes official action on matters that affect individual rights of citizens, as opposed to the rights of the public at large. Op. Atty. Gen. Fla. 81-06 (1981).

Manatee County provides written public notice posted in the County Administration Building. Notices are also posted electronically on the County website, run on the government access cable channel, and e-mailed or faxed to the media and various public officials. Other types of notices are also provided for public hearings through publication of advertisements in the local newspaper, posting signs, and mailing letters to individuals or groups affected by the issue.

Reasonable rules and policies to insure orderly conduct and behavior at public meetings may be adopted by the board or commission. Citizens may use nondisruptive devices to tape record and video tape board and council meetings. Op. Atty. Gen. Fla. 77-122 (1977); Op. Atty. Gen. Fla. 91-28 (1991).

For meetings where a large turnout of the public is expected, the board or commission should schedule the meetings at facilities which can accommodate the anticipated turnout. In addition, the use of video technology, such as a television screen outside the meeting room, may be appropriate.

Every oral communication uttered by members of a board or commission at a public meeting is entitled to be heard by the public. A violation of the Sunshine Law may occur if board members discuss issues before the board in a manner not audible to persons attending the board meeting. See, Op. Atty. Gen. Fla. 71-159 (1971).

A board may not use secret ballots to elect the chairman and other officers of the board, Op. Atty. Gen. Fla. 72-326 (1972), or to take action concerning a public employee, Op. Atty. Gen. Fla. 73-264 (1973). The use of predetermined numbers or codes at public meetings to avoid identifying either the vote of board members or the items voted on violates Sec. 286.011, Fla. Stat. Op. Atty. Gen. Fla. 77-48 (1977). Once a vote is taken, the public agency may not withhold the final decision from the public for any period of time. Op. Atty. Gen. Fla. 73-344 (1973).

Section 286.011(2), Florida Statutes, provides that "[t]he minutes of a meeting of any such board or commission . . . shall be promptly recorded and such records shall be open to public inspection." However, the minutes of public meetings need not be verbatim transcripts, but can be merely a brief summary or series of brief notes or memoranda reflecting the events of the meeting. Op. Atty. Gen. Fla. 82-47 (1982).

The Sunshine Law does not prohibit members of an advisory board from conducting inspection trips, but all requirements of Sec. 286.011, Fla Stat., must be met – advance notice must be given, the public must be afforded an opportunity to attend, and minutes must be promptly recorded. Op. Atty. Gen. Fla. 76-141 (1976). Members of the board must avoid discussions with each other regarding matters that may come

before the board for official action. Bigelow v. Howze, 291 So. 2d 645 (Fla. 2d DCA 1974). The exception to the Sunshine Law for fact-finding missions applies only to advisory committees and not to boards with ultimate decision-making authority. Finch v. Seminole County School Board, supra.

For meetings held outside the county, "[t]he interests of the public in having a reasonable opportunity to attend a Board Workshop must be balanced against the Board's need to conduct a workshop at a site beyond the county's boundaries." Rhea v. School Board of Alachua County, 636 So. 2d 1383 (Fla. 1st DCA 1994). The greater the distance, the heavier the burden upon the board to establish the need for meeting in such location. In addition, Sec. 125.001, Fla. Stat., requires meetings of the board of county commissioners to be held at any appropriate place in the county.

Section 286.011(6), Florida Statutes, prohibits boards or commissions from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status, or which operates in a manner that unreasonably restricts public access. Section 286.26, Florida Statutes, requires accessibility of public meetings to physically handicapped persons. Luncheon meetings to conduct board or commission business should be avoided. Such meetings may discourage attendance and participation by the public. Furthermore, discussions at such meetings may violate the openness requirement of the law if the members of the board or commission cannot be heard beyond the table at which they are seated. Op. Atty. Gen. Fla. 71-159 (1971).

While the Sunshine Law requires that meetings must be open to the public, the courts ruled that the law did not give the public the right to speak at the meetings. Keesler v. Community Maritime Park Associates, Inc., supra. Certain exceptions exist for public hearings, such as adoption of ordinances and rezonings. In response to the court cases, the Florida Legislature enacted Sec. 286.0114, Fla. Stat., which requires a board or commission to provide members of the public with a reasonable opportunity to be heard on a proposition before the board or commission. The opportunity to be heard does not have to occur at the same meeting when the board or commission takes official action on the item, but must take place within reasonable proximity in time to such meeting. This section allows boards and commissions to adopt policies or rules on providing testimony and establishes criteria for such policies (time limits for speakers, procedures for designating a representative of a group or faction, forms to indicate a speaker's position, and specified period of time for public comment). Exemptions from the opportunity for hearing include emergency situations, ministerial acts, meetings exempt from the Sunshine Law, or acting in a quasi-judicial function with respect to the individual rights of a person. The public participation statute provides for payment of attorney's fees in any action to enforce the opportunity to be heard but does not void any action taken by a board or commission in violation of the provisions.

## **VI. CONSEQUENCES / PENALTIES**

Any member of a board or commission who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree. Sec. 286.011(3)(b), Fla. Stat. A second degree misdemeanor is punishable by a fine up to \$500 and/or a term of imprisonment not to exceed 60 days. Secs. 775.082(4)(b) and 775.083(1)(e), Fla. Stat. The criminal penalties apply to members of advisory councils as well as members of elected and appointed boards. Op. Atty. Gen. Fla. 01-84 (2001).

Section 286.011(3)(a), Florida Statutes, provides that any public officer who violates the Sunshine Law is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500. If a nonprofit corporation is subject to the open meetings law, its board of directors becomes public officers for purposes of the statute. Op. Atty. Gen. Fla. 98-21 (1998).

The Governor may suspend an elected or appointed public officer who is indicted or informed against for any misdemeanor arising out of official duties. Sec. 112.52, Fla. Stat. If the officer is found guilty or pleads nolo contendere, the person may be removed from office by the Governor.

Section 286.011(4), Florida Statutes, requires the court to assess reasonable attorney's fees against

a board or commission found in violation of the Sunshine Law. Attorney's fees may be assessed against individual members of the board or commission, unless the board or commission sought and took the advice of its attorney. Sec. 286.011(4), Fla. Stat. The statute also authorizes an award of attorney's fees if the board or commission appeals any court order finding a violation of the Sunshine Law and the order is affirmed on appeal. Sec. 286.011(5), Fla. Stat.

The courts have held that any action taken in violation of the law is void *ab initio*. See, Blackford v. School Board of Orange County, *supra*. However, Sunshine Law violations can be cured by taking independent, final action at a public meeting held in compliance with Sec. 286.011, Fla. Stat. See, Monroe County v. Pigeon Key Historical Park, Inc., 647 So.2d 857 (Fla. 3d DCA 1994). Such final action must not merely perfunctorily ratify or ceremoniously accept the decisions made at the prior secret meeting. Tolar v. School Board of Liberty County, 398 So. 2d 427 (Fla. 1981). Since an audit committee's statutorily prescribed function to create a request for proposals may not be delegated to a subordinate entity, the Attorney General advised that the committee could not ratify a defective request for proposals which was created and issued by the county's financial officer. Op. Atty. Gen. Fla. 12-31 (2012).

The only remedies available pursuant to the Sunshine Law are a declaration of the wrongful action as void and reasonable attorney's fees. Dascott v. Palm Beach County, 988 So. 2d 47 (Fla. 4th DCA 2008), *review denied*, 6 So. 3d 51 (Fla. 2009). The court in this case ruled that an employee who prevailed in a lawsuit alleging that the termination violated the Sunshine Law may not recover the equitable relief of back pay because money damages are not a remedy provided for under the law.

Circuit courts have jurisdiction to issue injunctions upon application of any citizen of the state. Sec. 286.011(2), Fla. Stat. The burden of proof necessary for a citizen to prevail in such a case is less than normally required in an injunction proceeding. In Sunshine Law cases, a showing that the law has been violated constitutes irreparable public injury. Town of Palm Beach v. Gradison, *supra*.

Declaratory relief allows the court to rule on the meaning of the law or determine the rights of the parties to the action. Declaratory relief sought by a public board or commission regarding access to its meetings has not been viewed favorably by the courts. See, Askew v. City of Ocala, 348 So. 2d 308 (Fla. 1977).

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Published Monday, March 14, 2005

## Violations of Florida's "sunshine" law that resulted in criminal or civil penalties

By The Times-Union  
The Times-Union,

1977

-- Two Glades County commissioners and a former chairman fined and given suspended 60-day jail sentences after a judge convicts them of conspiring to meet without public notice.

1978

-- Former Indian Harbor Beach Mayor Jerry James fined \$500 and placed on probation after pleading no contest.

1979

-- Five present and former Redding Shores city commissioners fined a total of \$1,150 for holding a secret meeting and interfering with an election.

1980

-- Two Waldo City Council members fined \$10 each after a jury convicted them of illegally meeting.

1984

-- Former Bradenton City Clerk Wallie Eyeman sentenced to three months probation after pleading no contest to destroying public records.

1987

-- Ten members of Auburndale's Police Pension Retirement Board fined \$25 to \$125 each after pleading no contest to meeting without public notice.

1988

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- Former St. Augustine City Commissioner Mary Stallings placed on probation for six months after pleading no contest to discussing city business with now-former Commissioner Valerie Kroll, who was fined \$500 and costs after pleading no contest to civil sunshine violations.

Open Records Coverage - 03/13/05

**OFFICIAL SECRECY BECOMING THE RULE**

Sunshine State spreads the light of open records

Access enables informed decisions

Bills watched by open records group

COMMENTARY: Sunshine Sunday has big impact on Florida

More open records coverage - (2/8/04)

**SPECIAL**

REPORT - PUBLIC RECORDS: Sunshine law has clouds, audit finds

**Some**

Residents fight for access to public records

**Getting**

Public records in Jacksonville

**1989**

- Former Longwood Mayor David Gunter fined \$500 after pleading no contest to attending a secret meeting with former Deputy Mayor Lynnett Dennis and City Commissioner Rick Bullington, each fined \$500, placed on probation for 60 days and ordered to perform 25 hours of community service after being convicted by separate juries.

**1990**

- Three Hernando County Planning and Zoning Board members fined \$50 each and costs after pleading no contest to meeting privately to discuss hazardous waste burning.

- Four Minneola city officials ordered to pay costs and fined \$400, suspended to \$25 under the condition they study the sunshine law, after pleading no contest to civil charges of meeting in private.

- Ten Mount Dora city officials and employees ordered to pay costs and read the Government-in-the Sunshine Manual and given the choice of paying a \$25 fine or doing 25 hours of community service after pleading no contest to sunshine violations while selecting contractors. Six volunteer committee members were ordered to study the manual and perform community service to get their charges dropped.

**1991**

- Seven Highlands County officials, including four commissioners and a former commissioner, ordered to pay \$25 each in costs for secretly hiring and raising the salary of a county attorney.

**1992**

- Hernando County School Board member Diane Rowden fined \$322 and ordered to pay costs and read the sunshine manual after pleading no contest to open meeting violations while the other four members agree to study the sunshine law after pleading no contest.

**1995**

- Kenneth City Mayor Harold Paxton fined \$400 in costs after pleading no contest to closed or unadvertised meetings.

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-- Miami-Dade County Commissioners Bruce Kaplan and Maurice Ferre pay \$500 and \$250 to settle civil complaints of meeting secretly with their chairman, Arthur Teele Jr.

1996

-- Teele pays \$250 to settle a civil complaint of secret meetings.

1997

-- City of Opa-Locka pays a \$500 fine and \$108 in court costs and donates \$500 to United Way after former City Manager Earnie Neal pleaded guilty to ignoring record requests.

-- Former Estero Fire Commissioner Vernon Conly fined \$500 after a jury convicted him of meeting secretly with three other commissioners fined \$250 each after they pleaded no contest.

1999

-- Escambia County School Board member Vanette Webb served seven days of a 30-day jail term before a new judge overturned her conviction of withholding records. The judge later ordered a new trial after an appellate court reinstated the conviction, but prosecutors then dropped the charge.

2000

-- Two former Indian River County Hospital District Board members pay \$500 to settle civil charges of discussing public business privately.

-- Martin County commissioners ordered to release written transcripts of closed-door meetings and pay a newspaper's legal fees in a civil suit.

2001

- Golden Beach pays \$500 in fines and \$7,000 in legal fees to settle a civil suit against Councilman Adalberto Paruas, who ordered a citizen removed from a committee meeting.

- A judge voids a sewer contract discussed in secret and orders Monroe County to pay \$26,285 to a citizens group that sued.

2002

- Escambia County Commissioner Terry Smith ordered to pay fines and costs totaling \$4,987 and do 250 hours of community service after a jury convicted him of discussing redistricting and landfill issues in private with Commissioner W.D. Childers.

- Escambia County Commissioner Mike Bass ordered to pay fines and costs totaling \$4,000 after pleading no contest to discussing building projects and land use issues in private with other commissioners.

- Escambia County Commissioner Willie Junior pleaded no contest to open meetings violations and other crimes, including bribery and extortion, but he committed suicide before he could be sentenced.

2003

-- Childers sentenced to 60 days in jail after a jury convicted him of discussing redistricting privately with Smith and he pleads no contest to secretly talking about building issues with two other commissioners.

- Two Kissimmee city commissioners faced \$50 fines and costs after pleading guilty to civil violations of failing to notify the public of meetings.

- Welaka Mayor Gordon Sands pays a \$500 fine after pleading no contest to a civil charge of privately discussing the election of a town council president with a council member.

- Former Welaka town official Steve Richardson ordered to pay a \$250 fine after being found guilty of refusing to let two citizens inspect a recreation equipment sign-out sheet.

2004

-- Oak Hill City Commissioner Bob Jackson fined \$250 and ordered to take a sunshine law class after pleading no contest to discussing city business with a now-former commissioner.

-- Florida Turnpike Enterprise ordered to pay legal expenses of two citizens who sued over secret meetings held by an advisory committee.

Source: The Brechner Center for Freedom of Information, University of Florida

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## Childers takes plea, avoids retrial in Sunshine Law case

Associated Press

October 8, 2002

ENSACOLA -- Suspended Escambia County Commissioner W.D. Childers agreed Monday to a plea deal resulting in his second open-government Sunshine Law conviction.

ENSACOLA -- Suspended Escambia County Commissioner W.D. Childers agreed Monday to a plea deal resulting in his second open-government Sunshine Law conviction.

Childers pleaded no contest to discussing public business in private with two other suspended commissioners. Because his plea was not an admission of guilt, he can still appeal the case.

A jury in June convicted Childers, a former Florida Senate president, of a similar Sunshine violation and acquitted him on two other counts but deadlocked on this one. Childers' plea canceled the retrial, which was set to begin Wednesday.

Childers gave "yes, sir" answers to questions during Monday's hearing and declined comment afterward.

His lawyer, Richard Lubin, said both Sunshine convictions would be appealed together on legal issues.

Lubin said there was little dispute that Childers voiced his opinion on issues in front of other commissioners. "The issue is whether or not that would be a violation of the Sunshine Law," Lubin said. He contended that the Legislature never intended to prevent such monologues if the issues are neither debated nor acted upon.

"The purpose of the Sunshine Law is to prevent back room meetings and discussions and decisions about matters that are going to come before the board," Lubin said.

Maney, Okaloosa County Judge T. Patterson Maney admitted that the law is unclear. He said he would certify the issue as one of great public importance to the 1st District Court of Appeal in Tallahassee.

At trial, witnesses said Childers loudly voiced his opposition to signing contracts for a county construction projects while in a staffer's office. Two other now-suspended commissioners, Willie Junior and Mike Bass, came in and heard his comments. Junior testified that he agreed with Childers; Childers denied Junior gave such a response. The jury could not decide whether the Sunshine Law was violated.

The jury convicted Childers, however, for discussing redistricting issues with the county's supervisor of elections on a speaker phone with another now-suspended commissioner, Terry Smith.

A separate jury also convicted Smith of that charge and a second violation for discussing landfill issues in front of Childers while they ate at a Whataburger. Maney sentenced Smith to community service, fines and costs totaling nearly \$5,000 but no jail time.

The jury acquitted Childers of the Whataburger charge and for allegedly commenting on planning issues over lunch in his office.

Maney delayed Childers' sentencing until after he is tried on more serious bribery-related charges on March 31. He is accused of giving Junior \$70,000 to vote for buying a former soccer complex for \$3.9-million.

Bass and Junior also were charged with Sunshine violations and bribery-related felonies. Junior pleaded no contest to the Sunshine and felony charges. Bass pleaded no contest to a Sunshine violation and prosecutors dropped his felony charges. They have not yet been sentenced.

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The Palm Beach Post

Breaking news starts here



Updated: 2:38 p.m. Saturday, Nov. 9, 2013 | Posted: 7:01 p.m. Friday, Nov. 8, 2013

## South Bay commissioner convicted of Sunshine Law violation

By Jane Musgrave

Palm Beach Post Staff Writer

**WEST PALM BEACH** — A jury on Friday convicted South Bay City Commissioner Shirley Turner-Walker of violating the state's Sunshine Law, removal from office twice for the same offense.

John Tupps, a spokesman for Gov. Rick Scott, declined comment on what the verdict might mean for Turner-Walker's political future. "We are reviewing it," he said.

Scott suspended Turner-Walker, 65, from office shortly after she and two other commissioners were charged in December with privately agreeing with former City Manager Corey Alston for unused vacation time. Scott revoked the suspension in May after she won a special election for a City Commissioner.

But at the time, he cautioned: "This reinstatement is dependent upon the outcome of the charge of Sunshine Law violation. ... At the conclusion of the trial, she will be either permanently reinstated or removed from office, by subsequent order."

Attorney Jeffrey Weiner, who represented Turner-Walker during the two-day trial, called her conviction absurd.

"My client did nothing wrong," he said. "She's had an incredible career. She has an incredible background. She's been an incredible public servant."

Unlike other Palm Beach County elected officials who were imprisoned for using their offices for personal gain, there was no evidence that Turner-Walker had a private conversation with Alston. The former manager, who is awaiting trial on nine felonies in connection with his work in the imposition of a payment, she said she would approve the payment. She said she would if he could get other commissioners to agree, Weiner said.

"It was a very technical violation," he said. Florida law requires government officials to conduct business in the public interest.

While Turner-Walker faces a maximum 60-day sentence and \$500 fine when she is sentenced Tuesday, Weiner said prosecutors have agreed to withhold adjudication and place her on probation. Prosecutors could not be reached for comment.

Her former fellow South Bay commissioners — Linda Johnson, 48, and John Wilson, 66 — were both adjudicated guilty and placed on probation.

If Bonavita withholds adjudication, Weiner said Scott might not see a reason to remove her from office. Even if he does, it doesn't mean the conviction is final. Weiner said he has good grounds for an appeal.

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## Suspended South Bay commissioner pleads guilty to Sunshine Law violation

by George Bennett | May 10th, 2013



Four days before he appears on the ballot in a special election in South Bay, suspended city commissioner **John Wilson** pleaded guilty today to a misdemeanor charge of violating Florida's Sunshine Law.

The plea might actually enhance Wilson's chances of returning to the commission dais.

Gov. **Rick Scott** suspended Wilson and two others in December after they were charged with the Sunshine Law violation. Scott's office [said earlier this week](#) that, regardless of Tuesday's election results, Wilson would remain suspended until he was "reinstated, or removed from office as a result of a conviction."

With Wilson's conviction on the Sunshine Law charge, it would appear that his suspension is no longer in effect.

Scott spokesman **John Tupps** said the governor's office has not received official notification of Wilson's plea. Tupps declined to speculate on what would happen if Wilson wins on Tuesday. Wilson is running against **Olivia Anthony-Kerr** and **Shanique Scott** for commission Seat 4

Wilson's attorney, **Reginald Sessions**, said his client is also undecided on his political future.

"We haven't decided yet at this point whether or not it would be in his best interests to withdraw (from Tuesday's election) or remain on the ballot and see what the outcome of the election is," said Sessions.

Scott suspended three South Bay elected officials — Wilson, vice mayor **Linda Johnson** and mayor **Shirley Walker-Turner** — in December after they were charged with violating the Sunshine Law by agreeing in private to approve \$25,139 in vacation pay for former city manager **Corey Alston**.

Johnson was found guilty in April.

Walker-Turner is scheduled to go to trial June 5. She is on Tuesday's ballot against former city clerk **Virginia Walker** for Seat 5.

The Sunshine Law requires public officials to conduct public business in the open. Wilson, Walker-Turner and Johnson did not meet together, but agreed to approve the \$25,139 payment in a series of conversations each had with Alston.

"My client, to be honest with you, really didn't realize because of his actions that he was actually violating the law," Sessions said. "He didn't even benefit from this. He didn't obtain anything from this. There was no self-interest on his part and he was totally up front during the investigation."

Sessions said the only sanction against Wilson is about \$250 in court costs.

"It was just a matter of us dealing with this and being honest about it," Sessions said of Wilson's decision to plead guilty. "Now we have to deal with the consequences of it."

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## Orlando Sentinel

### Board member of beleaguered toll-road agency indicted

By Dan Tracy, Orlando Sentinel

10:28 PM EDT, April 24, 2014

A member of Orlando's beleaguered expressway-authority board was indicted on bribery charges Thursday by an Orange County grand jury — and more charges could be on the way for others connected to the toll-road agency.

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Scott Batterson, who faces 15 years in prison and a \$15,000 fine if convicted, was promptly suspended by Gov. Rick Scott. Batterson was appointed to the board of the Orlando-Orange County Expressway Authority by the governor in August 2011.

"All public officials must be held to the highest ethical standards," Scott said in a written statement.

The indictment said Batterson, an engineer who works for IBI Group of Maitland, "corruptly" sought for himself or others consulting work or other benefits in his role as a board member.

Batterson, 38, faces three counts: soliciting bribery by a public servant; soliciting compensation for office behavior (performance of duty); and soliciting compensation for official behavior (exerting influence).

State Attorney Jeff Ashton would not discuss specifics of the charges against Batterson. The grand jury, Ashton said, likely would meet again, and more indictments were possible, though he would not elaborate.

Calls to Batterson and his attorney, David Bigney of Orlando, were not returned. Batterson turned himself in Thursday night at the Seminole County Jail.

The charges against Batterson come as the authority has struggled to clean up its image in light of a 2009 report by another grand jury that said board members then operated in a "culture of corruption" related to raising political donations.

No indictments were issued, but that report led to the resignation of then-board Chairman Allan Keen and a series of policy and personnel changes designed to make the operation more transparent.

The authority brings in nearly \$300 million annually from tolls paid to ride on the agency's 109-mile system.

Two years ago, Max Crumit became the director and was widely credited with helping clean up the agency. Crumit opened the authority to the public, including publishing online every check written by the agency. But he quickly fell into disfavor after Marco Peña was appointed to the board by Scott in July.

Ashton started investigating the authority eight months ago, prompted by claims that Batterson, Peña and fellow board member Noranne Downs privately discussed ousting Crumit. Authority business can be talked about only in public meetings.

Peña, Batterson and Downs led a 3-2 vote of no confidence in August against Crumit, who resigned a month later. Crumit said Batterson told him before the meeting that he had three votes to force him to quit — a claim Batterson denied.

The three later voted to hire former state Rep. Steve Precourt, R-Orlando, who resigned his legislative seat to take the

job. But he turned it down after the board offered it to him on a monthly rather than a full-time basis because of the ongoing investigation.

In addition to the alleged violations of Florida's "Government in the Sunshine" laws, Ashton's investigators attended authority meetings in which land purchases were discussed, including property owned by a company, Project Orlando LLC, headed by Maitland attorney Jim Palmer.

Project Orlando intends to build a billion-dollar development called Kelly Park Crossing by the sole interchange within 15 miles of the Wekiva Parkway, a \$1.66 billion toll road being built by the authority and the state.

Batterson's employer, IBI Group, worked on Kelly Park Crossing until June 2011. Emails obtained by Ashton and reviewed by the Orlando Sentinel show Batterson was introducing potential investors to Palmer as recently as June.

Batterson said he was performing a "common courtesy" and would not be paid for his efforts. By authority rules, he cannot vote on Kelly Park Crossing matters within two years of having a business relationship with Palmer's company.

Along with Peña, Batterson and former state Rep. Chris Dorworth were invited to voluntarily testify before the grand jury Thursday. They all declined.

Dorworth, now a lobbyist who represents two companies that do business with the authority, was listed as a reference on Batterson's application for the authority board.

Emails also showed that Dorworth, Precourt, Peña and Batterson were friends and wrote to one another about the authority and politics. In one email, Peña asked Batterson's advice on how to get the authority board post.

Three other board members — Chairman Walter Ketcham, Orange County Mayor Teresa Jacobs and Downs — voluntarily spoke to the grand jury Thursday. Ketcham and Jacobs were supporters of Crumit and voted against Precourt.

Ketcham, who spent one hour before the 15-member panel, said his impression was the grand jury had more work to do.

"It appears from the indictment there was much more going on than just 'Government in the Sunshine' violations. I'm glad we were able to stop it before it occurred," Ketcham said.

Jacobs was the first to testify, spending more than an hour answering questions.

"They asked very insightful questions," said Jacobs, who would not comment on the indictment.

Downs' attorney, Henry Coxe of Jacksonville, said, "Ms. Downs is here voluntarily because she didn't do anything wrong."

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## Valparaiso officials avoid criminal charges

By TOM McLAUGHLIN / Daily News

Published: Tuesday, November 20, 2012 at 16:54 PM.

VALPARAISO — City commissioners won't face criminal prosecution for violating Florida's Sunshine Law.

The state attorney's office announced Monday it will not prosecute, although Okaloosa County Circuit Judge Thomas Remington ruled in a civil case that violations had occurred.

"This civil action has sufficiently punished the city and corrected any violations that may have occurred," a news release from the state attorney's office said.

The civil suit was filed in 2009 by Valparaiso resident Anthony Bradley after the City Commission voted to sue the Air Force for violating the Freedom of Information Act in a dispute over F-35 aircraft training at Eglin Air Force Base.

Bradley contended Valparaiso could not sue because permission for lawyers to take legal action was granted during private conversations between then-City Attorney Doug Wyckoff and three of the five city commissioners.

In a ruling in July that was highly critical of Wyckoff, Remington sided with Bradley and ordered the city to pay any attorney's fees or costs he had incurred.

The state attorney's office began an independent investigation after Remington issued his ruling, according to Chief Assistant State Attorney Greg Marcille.

Marcille said the review included looking at the attorneys who orchestrated the decision to sue the Air Force as well as the elected officials.

"There was no evidence the commissioners did anything in a willful manner," Marcille said. "And after looking at the law we concluded it would be difficult, if not impossible, to charge a non-board member with a violation even if they had done something."

Attorney Mike Chesser, who represented Bradley in the civil suit against Valparaiso, said in an email, "It was never our desire to see the State Attorney get involved in this matter."

"I have believed from the beginning that the F-35 lawsuits were driven more by the prior City Attorney's own personal interests than by a sincere desire to solve a problem," Chesser said. "A close reading of the judgment ... will show that the emotion surrounding those lawsuits was largely contrived and never really an expression of the city."



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## Groveland, A Tiny Town Plagued By Resignations And An FDLE Investigation



Employee resignations have become commonplace at the Groveland City Hall.

By Steve Miller  
Florida Center for Investigative Reporting

Groveland. The name conjures a placid vibe, a place where grapefruit and orange groves separate historic farmhouses. Located about 40 minutes west of Orlando, the central Florida town of about 8,700 residents was Florida's fastest-growing municipality between 2000 and 2010, with its population increasing 189 percent.

But it's also a place that the Florida Department of Law Enforcement is investigating, according to the Daily Commercial newspaper, which hints the probe involves violations of the state's open meetings laws. The story cited internal memos the paper obtained via an open records request. From the story:

*The memos obtained by The Daily Commercial show that on July 11, City Attorney Anita Geraci-Carver advised [Groveland Mayor James] Gearhart about a "potential" Sunshine Law violation and the city should "act on it as if it were real."*

*She was referring to an alleged incident where Gearhart and [Vice Mayor Tim] Loucks approached police Sgt. George "Scott" Penvose in a grocery store parking lot and asked him questions about police dispatching, which the council is considering outsourcing to the county. If that 30-minute conversation did occur, as Penvose said, it could be a violation of the Sunshine Law, which states that all government business will be conducted in public meetings.*

*The memos show a second alleged Sunshine Law violation that [City Manager Sam] Oppelaar immediately recognized. The city manager wrote that on April 5, when he was talking in his office about the possibility of the council voting to let him shed his "interim" city manager title, Gearhart said no immediate council action would be forthcoming on that. When Oppelaar asked Gearhart how he knew this, the mayor said "he had already spoken with the other council members," the city manager wrote.*

That's not enough; last week, Oppelaar resigned during a public meeting, effective Sept. 27, after a resident challenged him to step down. According to another Daily Commercial story, the town of 8,700 has seen a prolific exodus of city officials this year. From the story:

*So far this year, Groveland's city manager/finance director, public works manager, utility superintendent, police chief and Community Redevelopment Agency (CRA) manager have all quit, along with at least four other lower-level staffers. Several have cited either a hostile work environment or job meddling by Gearhart and Loucks as their reasons for leaving.*

Difficult work conditions are rampant, but at a public level, the notion of so many departures often lead to suspicion of malfeasance. In this

case, the FDLE's involvement hints at such a thing. So what's going on in Groveland? That was the header of an op-ed by in July that laid out the blueprint for small town madness.

Then there's the lawsuit filed in Lake County against Groveland by an activist, non-profit group, Citizens for Sunshine, over the alleged violation of the open meetings act reported by Oppelaar. It names the city, Gearhart and Loucks as defendants. Citizens also filed for a temporary injunction and has filed between 15 and 30 such cases since its inception in 2009, said attorney Andrea Mogensen, who represents the group.

"The group formed because the media used to do this kind of thing with regularity, Mogenson told FCIR. "But today, the media outlets have fewer resources and Citizens is trying to fill that gap."



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## Sarasota city commissioner refuses deal on lawsuit

By Ian Cummings

Published: Wednesday, April 2, 2014 at 5:24 p.m.

Susan Chapman did not accept a deal that could have ended last year's Sunshine lawsuit without any settlement money.

The deadline for accepting the offer passed on Tuesday at 5 p.m.

The settlement offer came last week, from Citizens for Sunshine, a nonprofit concerned with open government that sued the city, Chapman, and another city commissioner last year. The suit alleges that an October meeting on homelessness between city officials and a group of downtown merchants violated the Sunshine Law.



HERALD-TRIBUNE ARCHIVE

City Commissioner Susan Chapman has claimed that the lawsuit is an attempt to intimidate her into supporting plans for a homelessness shelter in the city, which she has opposed.

It was no surprise that Chapman did not jump on the offer. According to its terms, she would have to publicly admit having violated the Sunshine Law.

She would have had to say on the record and in public that she violated Sunshine Law by attending the Oct. 10 meeting, held in the morning at a downtown restaurant, knowing that the other commissioner and city staff would be there to discuss an issue that would likely come before the City Commission.

Chapman has maintained from the beginning that she did nothing wrong by attending the meeting, and has claimed that the lawsuit is an attempt to intimidate her into supporting plans for a homelessness shelter that she has opposed.

Chapman's attorney, William Fuller, declined to comment on the case.

The city spent about \$85,000 on Chapman's legal fees before cutting off funding for her defense two weeks ago. Chapman has continued battling Citizens for Sunshine for months after the city and another commissioner agreed to settlements in the case.

Andrea Mogensen, who is representing Citizens for Sunshine in the case, said she crafted the offer in part to prove a point.

Mogensen said it appeared that Chapman believed Citizens for Sunshine filed the lawsuit only to profit from a settlement. Mogensen has said the group pursued the case because the Oct. 10 meeting had the appearance of backroom dealings with city officials.

The city settled the case by admitting a Sunshine Law violation and agreeing to pay about \$17,000 in attorneys fees for Citizens for Sunshine.

Atwell, the only other commissioner named in the suit, did not admit any fault in the case and settled the suit by paying \$500 to a charity and agreeing to attend a Sunshine Law training.

If Chapman continues fighting, a costly trial looms for her later this year. The case is scheduled for a motions hearing in the Sarasota Circuit Court on Monday.

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# THE NEWS HERALD



 Panama City News Herald Header Logo

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## Government in the sunshine?

By ZACK McDONALD | *The News Herald*  
Published: Friday, April 4, 2014 at 19:20 PM.

**PANAMA CITY** — Florida Sunshine Law experts said Panama City officials at least violated the spirit and intent of the state's open meeting laws by discussing Downtown Improvement Board (DIB) business in a private meeting in February.

Barbara Petersen, president of Florida's First Amendment Foundation, gives between 30 and 40 seminars on the Sunshine Law each year to public officials. Her best piece of advice: "Don't talk about public business unless you are at a meeting sanctioned by Sunshine Law," she said.

"They are allowed to socialize, but they can't call this a social occasion," Petersen said of the private meeting. "They're talking about public business, and what I'm saying is it doesn't matter if they took action."

The issue illustrates how the state Sunshine Law is not completely black and white but, instead, sometimes hazy and fraught with loopholes. Even Petersen could not say unequivocally that Panama City officials meeting outside of public scrutiny violated the Sunshine Law.

### What happened

The mayor, a city commissioner and two DIB officials admitted to holding an unannounced, unrecorded meeting in February to discuss how DIB Director Dutch Sanger would repay \$11,625 in commissions for acquiring a \$125,000 BP grant and Fourth of July event funds from Panama City. Sanger agreed to repay the money from his built-up paid-leave hours, but a disagreement as to how much paid leave was owed to Sanger motivated the meeting, according to Mayor Greg Brudnicki.

Brudnicki maintained that, because the meeting was held to discuss DIB business and was not subject to a City Commission vote in the foreseeable future, he and Commissioner John Kady — who also attended the meeting — did not violate Sunshine Law.

"We were not talking about something (the commission) would make a decision on, and I was not part of their decision-making process," Brudnicki said. "We appoint those people, and they decide what is going on."

Sanger's contract is between himself and the DIB, but DIB Chairman Jim Hayden, an appointed DIB member, also was part of the private meeting.

In addition to discussing DIB business, Kady has admitted to threatening the DIB's millage rate in the private meeting. DIB millage rates are determined by a commission vote and ultimately affect the amount of taxes downtown property owners pay to be within the DIB district. One of the properties — Trigo Deli and Catering — is owned by Kady.

Sanger and Hayden also recalled the statement, but Brudnicki said DIB millage rates were not part of the conversation.

"I don't remember talking about the millage rate at all," he said, "not at all."

A Florida attorney general's interpretation of the public meeting law appears to support Brudnicki's position.

"The law, in essence, is applicable to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission," it states.

However, according to the Florida Constitution — which takes precedence over all other documents — commissioners at least violated the intent of the Sunshine Law, Peterson said.

"All meetings of any collegial public body ... of a county, municipality, school district or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public," it states.

"It says 'or discussed,' " Petersen said. "It doesn't mention meetings where actions are to be taken and makes no mention of official acts. ...

"If I was the mayor," she said, "I wouldn't be quite so sure."

### **'Significant influence'**

Petersen supported her position with numerous Florida Supreme Court decisions that side with open meeting laws over even well-intentioned elected officials.

One of those was 2008's Finch vs. Seminole County School Board, where the court found School Board officials there violated the Sunshine Law by participating in a "fact-finding" expedition.

Media outlets were invited on a School Board bus trip to revise school attendance zones in anticipation of a new high school. As another precaution, officials did not sit near each other, discuss their opinions nor take a vote during the trip. Likewise, no minutes of the trip were documented.

The School Board was found to have broken the law, though — not because rezoning actions were later taken, but because the trip was not reasonably noticed to the public and board members had the opportunity to make decisions on the sly.

The court concluded School Board members on the trip "had ultimate decision-making authority; it was gathered together in a confined bus space; and it undoubtedly had the opportunity at that time to make decisions outside of the public's scrutiny," the conclusion states.

The mayor's authority of appointing DIB members, and the commission's approval of those members, gives commissioners ultimate decision-making authority over DIB activity, Petersen said.

"The commission does have significant influence on the DIB — particularly if the mayor is responsible for appointing members," Petersen said.

### **Penalties**

Gray areas exist in the Sunshine Law, but the stiff penalties a violation carries are meant to deter elected officials from considering entering the shade and to keep the public informed about decision-making discussions of the people voted into office, Petersen said.

"The purpose is to give (the public) access to the entire deliberative process," she said.

While unintentional violations only carry a fine of \$500, willful violations of the Sunshine Law can carry a maximum penalty of \$500, 60 days in jail or removal from office. But even in unintentional violations, if the city were sued for violating the law and the plaintiff wins, the city could be responsible for considerable legal fees and court costs.

For instance, the Sarasota County town of Venice lost a lawsuit dealing with public meetings in 2009 and was ordered to pay \$1.5 million in legal fees.

In the case of the Panama City commissioners and DIB members' meeting, the facts stand as: It was not publicly announced, media outlets were not invited to attend, DIB business was discussed and documentation of discussions were not kept nor made public.

Brudnicki said if open meeting laws were violated, it was not willful, and because some details of that meeting were eventually brought into the light, the parties involved corrected any Sunshine Law violation.

“Whatever was said and done was exposed and brought out; I didn’t think there was any stone unturned,” he said. DIB members “have the controls in place now, and if there is another issue, the onus is on them to deal with it.

“If they don’t do what they’re supposed to do, they might not be reappointed,” he added.

#### **Florida Sunshine Law violations**

The Brechner Center for Freedom of Information in Gainesville each year compiles a list of open records violations. Below are brief summaries of recent rulings where public officials were found to be in violation Florida’s Sunshine Law.

**January:** Sarasota settled a lawsuit with Citizens for Sunshine Inc. The city admitted violating Florida’s open meetings law and agreed to pay attorney’s fees to the government watchdog group.

**January:** Lakeland spent more than \$220,000 in legal fees during a grand jury’s investigation regarding the Lakeland Police Department’s public records policy, according to The (Lakeland) Ledger, a sister paper of The News Herald.

**January:** Orange County officials agreed to enter settlement discussions in a pending civil lawsuit, according to the Orlando Sentinel. The settlement stipulated each party pay its own legal fees but the county will pay mediation fees coming to \$90,000.

**December 2013:** Venice settled a lawsuit claiming a violation of a previously settled open-meeting lawsuit, which cost the city about \$1.5 million. After signing the agreement, the city held training sessions for council members on the Sunshine Law but did not admit it violated the law. The city was ordered to pay \$2,607 in legal fees to Citizens for Sunshine’s attorney.

**October 2013:** State Attorney Jeff Ashton found Mayor Teresa Jacobs and four Orange County commissioners violated the public records law when they deleted text messages about government decisions, according to the Orlando Sentinel. The state attorney did not file criminal charges but imposed a \$500 fine on the officials.

**July 2013:** Martin County School Board unanimously approved a \$20,000 settlement to the Sarasota-based nonprofit advocacy group Citizens for Sunshine, ending a lawsuit stemming from an alleged violation of the state’s Public Records Law.

**July 2013:** Sarasota entered into an agreement with Citizens for Sunshine to dismiss its lawsuit over the selection of a contractor for the \$7.3 million State Street public garage project. Sarasota agreed to provide Sunshine Law training to purchasing department staff and pay Citizens for Sunshine’s attorney’s fees and costs.

**March 2013:** Clay County commissioners agreed to settle a citizen-filed public records lawsuit. Although the county did not admit any wrongdoing, it conducted enhanced training on Florida’s public records policies for all county employees.

**February 2013:** Polk County School Board settled a public records lawsuit with a Lakeland resident. The plaintiff agreed to drop the lawsuit as well as several public records requests in exchange for the production of email correspondence. The board agreed to pay legal fees and reimburse \$668 for public records searches that yielded 21 emails.

**January 2013:** Sarasota settled a lawsuit filed against them by activists alleging violation of the Sunshine Law. They agreed to pay \$7,000 in legal fees and \$3,000 to hire an outside attorney to represent one of the committee members individually named in the suit. The city plans to hold refresher sessions on the state’s Government in the Sunshine Law and email usage for commissioners and advisory board members.

**September 2012:** Jacksonville Mayor Alvin Brown’s office will pay *The Florida Times-Union* \$15,000 to settle a lawsuit over access to public records. *The Times-Union*’s attorney, George Gable, said the newspaper incurred \$16,300 in fees and expenses to gain access to the records.

**September 2012:** A judge ruled the city of Valparaiso violated Florida’s Sunshine Law on two separate occasions when it conducted a private meeting and failed to provide public notice.

**August 2012:** Judge Chris Patterson, of the 14th Judicial Circuit, ruled the city of Vernon had violated the Sunshine Law. *The Washington County News*, a sister paper of *The News Herald*, argued an executive session to update council members of pending litigation was a violation of the Sunshine Law and that the tape of the meeting should become public record.

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**SEPTEMBER 2012:** A judge ruled that the city of Valparaiso violated Florida's Sunshine Law on two separate occasions when it conducted a private meeting and failed to provide public notice.

**AUGUST 2012:** Judge Chris Patterson, of the 14th Judicial Circuit ruled that the city of Vernon had violated the Sunshine Law. *The Washington County News*, a sister paper of *The News Herald* (Panama City) argued that an executive session to update council members of pending litigation was a violation of the Sunshine Law and that the tape of the meeting should become public record.

**JUNE 2012:** Booker Young Jr., 81, was found guilty of violating the state's Sunshine Law for actions related to a March 16, 2011 Lake Wales Housing Authority Board meeting. He was fined \$67 for the civil violation and ordered to pay \$500 to the State Attorney's Office for investigation and prosecution costs.

**MAY 2012:** An investigation which began September 2011, ended with each of five Crestview City Council officials being fined \$500 for violating Florida's Sunshine Law. Emails released as part of the investigation indicated that council members had discussed matters through email that were required to be discussed at public meetings.

**MARCH 2012:** Circuit Judge James H. Daniel ruled that a Duval County activist was entitled to \$1245.00 for expenses he incurred in his lawsuit against the Jacksonville Police and Fire Pension Fund, but said that the fund did not act willfully in breaking the Public Records Law so it would not be liable for his attorney's fees.

**MARCH 2012:** The Inverness County Board of County Commissioners settled a public records lawsuit out of court for \$1450.00.

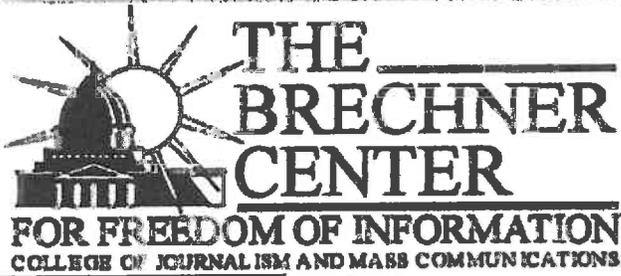


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**November 2011:** The Southeast Volusia County Hospital District recently approved a \$1 million settlement fee to be paid to the Bert Fish Foundation by the hospital's insurance policy. This is a result of the lawsuit filed by the Bert Fish Foundation to stop a merger between public Bert Fish and private nonprofit Adventist Health. The merger was the result of 21 meetings that had been illegally closed to the public.

**September 2011:** A Duval County activist has prevailed in his public records lawsuit against the Jacksonville Police and Fire Pension Fund. The Fund asked Curtis Lee, Director of the Concerned Taxpayers of Duval County to pay a \$280 so an employee could supervise Lee's inspection of the records for eight hours. Daniel also found the fund should not have asked for \$27.66 per hour for an employee to make copies of the records before copies were even requested. In addition to its own \$160,000 in legal fees the fund might also be responsible for part of Lee's attorneys' fees.

**AUGUST 2011:** A member of the Florida Keys Mosquito Control District pleaded guilty to a non-criminal violation of the Open Meetings Law. Joan Lord-Papy, a five-term commissioner, will pay \$250 fine along with \$270 in court costs. Lord-Papy was charged after responding to an email from a fellow commissioner discussing interview dates for district director applicants. The original email, sent by Commissioner Jack Bridges, included a warning that other commissioners should not reply to avoid violating the Open Meetings Law.



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**MARCH 2010:** The 1st District Court of Appeal has ruled that the city of Alachua violated the Public Records and Open Meetings Laws when it refused to allow two citizens to review a canvassing board's minutes before the City Commission approved them. This overturns the trial court's ruling that Michael Canney and Charles Grapski's claims were moot since the city eventually provided the records they requested. The Court held that "the City's denial not only breached the duty to provide such records at a reasonable time and under reasonable conditions but also contravened the purpose and mandate of our public records law."

**MAY 2010:** Gov. Charlie Crist suspended two Coral Springs City Commission members after they were accused of violating the Open Meetings law. The two allegedly met with police union representatives at a sports bar to discuss union negotiations and a salary freeze. Vincent Boccard and Tom Powers deny the allegations. They could each face up to 60 days in jail and a \$500 fine.

**SEPTEMBER 2010:** Jeff Koons, a member of the Palm Beach County Commission has pleaded guilty to extortion, perjury and violating the Open Meetings Law. Koons will not serve jail time but will pay an \$11,500 fine in addition to five years of probation. The Open Meetings Law charge was based on private discussions of an environmental project he supported, with a fellow member of the Lake Worth Lagoon Initiative, an advisory group for Palm Beach County. The other member denies wrongdoing and has not been charged with violating the Sunshine Law.

**OCTOBER 2010:** Six Wauchula City commissioners face two misdemeanor counts of intentionally violating the Sunshine Law. One commissioner who only attended one meeting, faced one count. They each pleaded no contest to a single count of violating the Open Meetings Law and were ordered to pay \$325 for fines and court costs as part of their plea agreement. The mayor must also pay \$500 for prosecution costs with the remaining members paying \$300 each for prosecution costs. Adjudication of guilt was withheld.

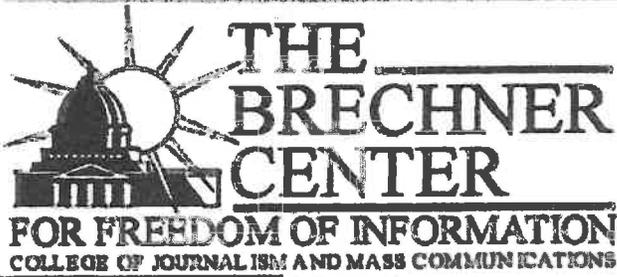
**OCTOBER 2010:** Vince Boccard and Tom Powers, two members of the Coral Springs City Commission, have been reinstated by Gov. Charlie Crist following a suspension over Sunshine Law charges. Gov. Crist's office reviewed the case and rescinded the suspension order nine days after the trial. They were suspended in March after each being charged with a misdemeanor violation of the Open Meetings Law.



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**JANUARY 2009 (Washington, D.C.):** A federal court ordered the U.S. Department of Justice to turn over ten Office of Legal Counsel memoranda relating to President Bush's domestic surveillance program. The Electronic Privacy Information Center, American Civil Liberties Union and National Security Archive filed a lawsuit to obtain the documents in 2005 after the DOJ denied their Freedom of Information Act request

**AUGUST 2009 (Polk County):** Polk County School Board Attorney Wes Bridges was ordered to pay \$475.50 in fines and costs after pleading no contest to violating Florida's Public Records Law.

**OCTOBER 2009 (Pensacola):** Escambia County Commissioner gene Valentino pleaded no contest to a noncriminal violation of Florida's Public Records Law. He was fined \$500.

**NOVEMBER 2009 (Bonita Springs):** A city councilwoman charged with a civil violation of the Public Records Law for deleting city business e-mails from her home computer will pay a fine as part of her agreement with the State Attorney's Office. Janet Martin pleaded no contest to a civil charge of unintentionally violating the Public Records Law. She will pay a \$250 fine.

**NOVEMBER 2009 (Venice):** A Venice man arrested at a 2002 meeting of the Venice City Council has settled his lawsuit against the city in connection with the incident. After years of litigation, the suit was settled for \$35,000..



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**FEBRUARY 2008 (Fort Myers):** The federal government will pay \$105,000 in attorneys' fees to The News-Press following the newspaper's successful lawsuit against the Department of Homeland Security for the release of public records. The agency was sued after it refused to release information about the 1.1 million recipients of \$1.2 billion in disaster aid after the 2004 Florida hurricane season.

**FEBRUARY 2008 (Washington, D.C.):** A federal judge ruled that White House visitor logs are public records, rejecting the Bush Administration's efforts to avoid release of records that show visits by prominent religious conservatives. The Bush Administration is expected to appeal the ruling.

**FEBRUARY 2008 (Marco Island):** Marco Island City Councilman Chuck Kiester has been accused of violating the Florida Public Records Law, which prohibits the deletion of e-mails related to government business. Kiester was charged with failing to maintain, preserve or allow inspection of public records that were generated between the time he took office in March 2006 until March 2007.

**MARCH 2008 (West Palm Beach):** The 4th District Court of Appeals ruled that portions of a grand jury report about a government official's alleged manipulation of a public meeting rebroadcast will not be deleted from the report. The investigation criticized Mayor Lois Frankel's delay of a 2004 rebroadcast on the city's public access cable channel of a city meeting in which citizens criticized the city's efforts to fight crime.

**MARCH 2008 (Fort Lauderdale):** The Federal Emergency Management Agency will pay 75 percent of the South Florida Sun-Sentinel's attorney fees following a legal battle for the identities of disaster-aid recipients of the 2004 Florida hurricane season.

**APRIL 2008 (Sneads):** The City of Sneads agreed to pay former Police Chief William Nelson \$10,000 and his attorneys \$25,000 seven years after he filed suit alleging the city violated Florida's Open Meetings Law. The former police chief was fired by the town council during a special meeting to which, he alleged, the public was not given proper notice.

**APRIL 2008 (Hallandale Beach):** City Commissioners have agreed to pay former Hallandale Beach Police officer Talous Cirilo more than \$100,000 to settle a lawsuit. In 2005, the city refused to reinstate Cirilo on the police force after he was charged with and acquitted of three misdemeanor counts of battery on a prisoner. The two lawsuits filed against the city alleged that the city civil service board held an illegal meeting a week before the scheduled meeting. It also alleged falsification of evidence and persuasion of a felon to lie under oath about Cirilo.

**APRIL 2008 (Jacksonville):** An unsealed grand jury report found evidence that Jacksonville City Council members committed "technical or noncriminal" violations of Florida's Open Meetings Law. State Attorney Howard Shorstein said he will not prosecute unless there is evidence of a kickback to a Jacksonville City Council member or other criminal act.

**APRIL 2008 (Highlands County):** The 2nd District Court of Appeals ruled that public records providers can include both salary and benefits when calculating their special service charges for responses to extensive public records requests. The case stemmed from a 2005 records request which charged \$65 in advance to cover the estimated costs of locating the records. The suit alleged that the county failed to make the records available to the requester and that he should have not been required to prepay for the records search.

**MAY 2008 (Broward County):** Collier County Judge Mike Carr found Marco Island city council member Chuck Kiester guilty of a noncriminal public records violation for deleting e-mails that contained information about city business from his personal computer. Kiester was ordered to pay the maximum \$500 fine.

**JUNE 2008 (Washington, D.C.):** Former USA Today reporter Toni Locy appealed a district court judge's contempt order imposing fines of up to \$5,000 per day—from Locy's own pocket—for refusing to reveal confidential sources. The order was issued after Locy refused to disclose the names of sources who identified a former Army infectious disease researcher as a suspect in a federal investigation into terrorist attacks. Locy was prohibited from receiving assistance in paying the fines.

**JUNE 2008 (Sarasota):** The Sarasota Circuit Court dismissed a 2006 defamation suit filed by an elementary school principal against a TV news station after 10 months of inactivity on behalf of the plaintiff in the case. The suit alleged that the station's assistant manager and news director spread misinformation about the principal's 2002 arrest for stalking, a charge that had been dropped.

**JULY 2008 (Venice):** After an emergency hearing, a circuit judge ruled three Venice City Council members must allow a computer expert to obtain government business e-mails from their home computers. A recently filed lawsuit claims that four council members violated the Open Meetings Law by discussing city business in private e-mails.

**JULY 2008 (Naples):** Terminated Collier County school district superintendent Ray Baker settled his Open Meetings Law violation lawsuit with the district for \$555,000. Baker alleged that school board members violated the Open Meetings Law to meet and secretly terminate his contract by voiding it. The School Board attorney advocated settling and estimated that had the case gone to trial, the district would have faced \$2.2 to \$2.67 million in exposure.

**AUGUST 2008 (Sarasota County):** The Sarasota County Sheriff's Office settled a lawsuit alleging the office failed to give the public enough notice of disciplinary hearings. In exchange for dropping the suit, the settlement agreement requires the office to have training on open government laws, amend its internal rules and pay \$15,613 in attorney fees to the plaintiff.

**AUGUST 2008 (Sebring):** Highlands County Commissioners settled a lawsuit filed by a watchdog claiming that the county failed to copy a grant application for state funds to refurbish a high school as a hurricane shelter. Plaintiff Preston Colby received over \$9,100 in the settlement.

**AUGUST 2008 (Washington, D.C.):** A U.S. district judge ruled that the White House's Office of Administration does not have to comply with FOIA and make public internal documents about the disappearance of e-mails.

**NOVEMBER 2008 (Orlando):** A circuit judge awarded Larry Giles, the operator of the Veranda Park News, \$180,000 under a Florida Statute that protects homeowners who petition regarding their homeowners' associations. Giles was initially sued by real estate group Veranda Partners after he published allegedly defamatory statements saying the company misspent homeowners' association dues, among other things. Giles counterclaimed that the suit was unlawful under Florida's anti-SLAPP statute because it intended to stop him from petitioning.



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**JANUARY 2007:** Two Monroe County commissioners were charged with violating the Sunshine Law. Mayor Mario Di Gennaro and Commissioner Sonny McCoy each face a civil infraction carrying a fine of up to \$500. The charges stemmed from a September post-meeting discussion regarding an upcoming mayoral election. Di Gennaro and then-Mayor McCoy allegedly had a brief conversation about Di Gennaro's plans to run for mayor.

**FEBRUARY 2007:(Tampa):** Former county worker Gary Mitchell was unsuccessful in his attempt to appeal the dismissal of his case. Mitchell claimed he was denied his First Amendment rights when he was fired from his job after making graphic remarks about female genitalia when addressing a former commissioner.

**MARCH 2007 (Ocala):** A hospital that was indicted on misdemeanor charges for violating Florida's open government laws during a CEO search has reached an agreement with the State Attorney's Office. The hospital, which leases publicly owned facilities, did not concede guilt but will pay \$2,000 for investigative costs.

**MARCH 2007 (Key West):**Florida Keys Community College will pay the legal fees of a newspaper company after the two parties reached a settlement in a First Amendment retaliation lawsuit. Cooke Communications, owner of the Key West Citizen, filed suit claiming its constitutional right to publish without retribution from a government agency was violated. The college did not admit any wrongdoing but did agree to pay \$9,000 in court fees.

**MARCH 2007 (Ocala):** A hospital that was indicted on misdemeanor charges for violating Florida's open government laws during a CEO search has reached an agreement with the State Attorney's Office. The hospital, which leases publicly owned facilities, did not concede guilt but will pay \$2,000 for investigative costs.

**MAY 2007 (Tampa):**The Tampa Tribune received \$28,106 from the Tampa Bay Convention & Visitors Bureau to pay the newspaper's legal fees in connection with a public records lawsuit against the bureau. The bureau said the payment was not an admission of wrongdoing. The payment ends the dispute between the newspaper and the bureau over bid preparation documents for the 2008 Republican National Convention.

**AUGUST 2007 (Washington, D.C.):** The Supreme Court ruled that a high school principal did not violate a student's First Amendment rights when she told him to take down a 14-foot banner that read "Bong Hits 4 Jesus" and subsequently suspended him for 10 days when he refused. The decision gives schools wider discretion to limit messages that appear to advocate illegal drug use.

**OCTOBER 2007 (Fort Myers):** A panel for the U.S. 11th Circuit Court of Appeals ruled that FEMA must provide The News-Press (Fort Myers) and other Florida newspapers with the addresses of households that received disaster aid between 1998 and 2004. The News-Press found that fewer than one in three received assistance. In opposing the release of the information, the government argued that disclosure would violate the privacy of recipients, stigmatize victims and potentially be used for identity theft.

**OCTOBER 2007 (Lakeland):** The Polk County Opportunity Council's effort to overturn a ruling that they violated the Open Meetings Law was rejected by the 2nd District Court of Appeal. Because the 2nd District didn't issue a written opinion, the PCOC has nothing to appeal to the Florida Supreme Court. The civil infractions against the 10 board members stemmed from a September 2005 meeting where the board paused a public meeting to discuss reprimanding its executive director.

**DECEMBER 2007 (Fort Myers):** The News-Press prevailed in a public records lawsuit against city councilman Warren Wright, winning the right of access to a settlement agreement. Wright sued the city and a developer over the construction of a 14-story tower near a lot he owned in a historic district. The suit was later settled, but the agreement was not made public.

**DECEMBER 2007 (Orlando):** Orlando television station WKMG-TV prevailed in a lawsuit challenging a trial court's order which prohibited it from airing stories about a political consultant. The 5th District Court of Appeal ruled that consultant Doug Guetzloe did not prove his privacy concerns outweighed the station's First Amendment rights.



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### [About The Brechner Center](#)

The Brechner Center answers queries about media law from journalists, attorneys, and other members of the public. The Center is prepared to explain issues relating to media law, react to current developments, and offer speakers for meetings and classes.




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**JANUARY 2006:** Former Ocoee city commissioner Danny Howell pleaded no contest to violating the Sunshine Law. He was fined \$500 plus court costs for the civil infraction. Howell was also charged with a second-degree misdemeanor for allegedly violating the Sunshine Law, but prosecutors dropped that charge. The charges stem from a 2004 phone call to a fellow commissioner, where the two allegedly discussed a proposed real estate transaction that would come before the commission.

**FEBRUARY 2006:** A noncriminal judgment against former Oak Hill City Commissioner Ron Mercer for violating the Sunshine Law was overturned by two circuit judges. Judges John Watson and Edwin Sanders vacated the November 2003 judgment and ordered Mercer's \$500 fine be returned. Mercer and fellow commissioner Bob Jackson reportedly had a private discussion about a mayoral appointment in January 2002. In a joint opinion, the judges found that "the brief exchange between the two officials did not constitute a meeting at which official acts are to be taken or at which public business of such (collegial public) body is to be transacted or discussed." Assistant State Attorney Phil Havens said the State is likely to seek an appellate review of the opinion. The 5th DCA denied the State's petition to reweigh the case in February 2006. (See also December 2002, July 2003, November 2003, and August 2005.)

**APRIL 2006:** Ten members of the Polk County Opportunity Council were found guilty of violating the Sunshine Law. County Judge Anne Kaylor ordered each board member to pay a \$250 fine and \$28.60 in court costs. The non-criminal charges stemmed from a closed September meeting during which the board discussed former executive director Carolyn Speed. The members charged are Patricia Hunter, Collins Smith, Morris Chestang, Booker Young, Beverly Howell, Jessie Kirby, Annie Bryant Phyll, Ben Graham, Dennis Goosby and Ozell Wilson. The PCOC members later appealed the ruling in June 2006, but the appeal was denied by a circuit judge.

**MAY 2006:** A circuit judge dropped criminal charges against an Escambia County commissioner who died in 2004. Willie Junior disappeared a day before he was to be sentenced on corruption charges. He died of an apparent suicide. The main reason for the request to drop charges was to allow Junior's widow to receive her husband's retirement benefits from the county and state. Junior and three other county commissioners were indicted in May 2002. Junior faced charges ranging from racketeering and bribery to violating the Sunshine Law.

**MAY 2006:** Four Pompano Beach City Commissioners charged with violating the Sunshine Law have agreed to donate \$200 each to charity. In exchange for the commissioners' admission of guilt and donation, prosecutors have agreed that the violations were inadvertent. The charges stemmed from a 2004 lunch meeting between commissioners Kay McGinn, Susan Foster, Lamar Fisher and George Brummer and Broward County Sheriff Ken Jenne.

**JULY 2006:** Two current and three former town council members were accused of violating the Sunshine Law by allegedly excluding town employees from public meetings. The charges stemmed from a 2004 budget workshop during which the then-town manager was asked to leave while his salary was discussed. Mayor Richard C. Dunlop and former council members Walter J. Sackville, John Brehmer and Barbara Greenbaum Deputron were accused of the violation.

**SEPTEMBER 2006:** A four-month investigation into alleged Sunshine Law violations by Monroe County commissioners resulted in no evidence of wrongdoing, according to a State Attorney's Office report. The firing of the county attorney at a February meeting prompted the investigation. Richard Collins was fired at the meeting after the action was added to the agenda at the last minute. The investigation involved interviews with the five commissioners and other county employees. E-mails, cell phone records and other communications were also subpoenaed.

**SEPTEMBER 2006:** A hospital indicted on misdemeanor charges for violating Florida's open government laws during a CEO search reached an agreement with the State Attorney's Office. A Marion County grand jury indicted Munroe Regional Health Systems Inc., saying hospital officials violated public records and open meetings laws this year while searching for a new chief executive officer. The grand jury indicted the not-for-profit hospital on two counts following an investigation by State Attorney Brad King. Individual board members were not charged. In exchange for amending its lease to reflect principles of "operating in the spirit of open government," the State Attorney's Office dismissed the charges.

**OCTOBER 2006:** A Sebastian city councilman was found not guilty of violating the state's Sunshine Law and charges were dropped against another council member, with a judge saying the law does not ban all talk between public officials. Andrea Coy and Sal Neglia faced noncriminal charges for violating the Sunshine Law. At a January 25, 2007, meeting, Neglia said he recently had called Coy to learn more about a dispute between local lawn bowlers and tennis players over the use of a park's clay tennis courts. Former Mayor Walter Barnes filed a complaint with the State Attorney's Office about Neglia and Coy talking about city business outside of a public meeting.



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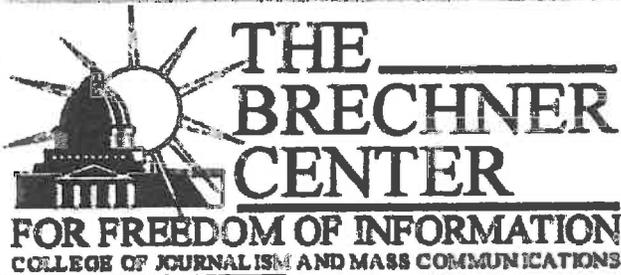
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**JANUARY 2004:** Former Oak Hill City Commissioner Ron Mercer was ordered to pay a \$500 fine for violating the state's open meetings law nearly two years ago. Although he never violated the law intentionally, the fine was for the noncriminal infraction. Another commissioner pleaded no contest to the violation in May and was fined \$250 and ordered to attend a Sunshine Law class.

**JANUARY 2004:** Circuit Judge Janet Ferris denied a motion by the Florida Dept. of Transportation (FDOT) to dismiss a suit filed by community members who allege that the Environmental and Resource Agency Group (ERAG), a branch of the state's Turnpike Enterprise met privately in violation of the state's Sunshine Law.

**MAY 2004:** The 5th District Court of Appeal ruled that Hernando County violated the state's open government law by excluding the public from meetings to review development plans. The county was required to pay the legal fees of lawyer Ralf Brookes who represented the environmental group who filed the lawsuit.

**JUNE 2004:** A judge fined the executive director of the Florida Crown Workforce board, which helps secure jobs for those needing employment, \$100 for court costs after the director decided not to contest a civil infraction for aiding and abetting a Sunshine Law violation.

**JULY 2004:** The 4th District Court of Appeal ruled that a Palm Beach County grievance panel violated the state Sunshine Law when it decided to fire a senior secretary behind closed doors. The employee will get her job back and will be entitled to back pay.

**SEPTEMBER 2004:** An Escambia County Commissioner, Janice Gilley, and a task force were found to have violated the state's Sunshine Law by failing to properly advertise meetings but the grand jury cleared them of criminal wrongdoing.

**DECEMBER 2004:** A three judge panel of the 1st District Court of Appeal upheld the conviction of Escambia former State Senate President and former Escambia County Commissioner, W.D. Childers, who violated Florida's Open Meetings Law by secretly meeting with other officials.



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**PUBLIC RECORDS LAW FOR ELECTED  
AND APPOINTED OFFICIALS**

## **PUBLIC RECORDS LAW FOR ELECTED AND APPOINTED OFFICIALS 2014**

### **WHAT IS A PUBLIC RECORD?**

All.....

Documents    Papers            Letters            Maps            Books            Tapes  
Photographs    Films            Sound recordings    Data processing software.....

.....made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency, which are used to perpetuate, communicate or formalize knowledge....

.....regardless of whether they are in their final form.....

.....unless the Legislature has exempted them.

- Where/when produced not relevant
  - “personal time” vs. “on duty”
  - “on a government computer” vs. “on my personal laptop”
  - “just elected” vs. “already sworn in”
  
- Record types
  - Traditional paper
  - Electronic/digital records
  - Notes and drafts
  - Records possessed by private entities working for/with government
  
- Private records, even when produced on public time or machines are not public

### **CURRENT ISSUES**

- Facebook pages
- Twitter
- Texting

## **WHO IS THE “CUSTODIAN” OF A PUBLIC RECORD?**

### **Public Employees or Officials Using Personal Accounts:**

Florida Statute § 119.011(5) defines “Custodian of public records” as:

the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

Once an email or text involving agency business is created using a public official's personal account, the public official becomes the "agency" and is thus personally responsible for complying with the state records retention policies, including the need to establish a method of retaining records per the State's records retention schedule. *Butler v. City of Hallandale Beach*, 68 So.3d 278 (4<sup>th</sup> DCA 2011)

The individual public official, not the governmental agency, should bear the duty (and thus the expense) of responding to a public records request involving his or her personal accounts. AGO 08-07.

## HOW ARE REQUESTS MADE, AND TO WHOM?

- Any way anyone wishes to make them:

**E mail      Phone      Fax      Written      In person**

- Can local governments regulate the request process?    **NO!**
  - A local government **CANNOT**:
    - ▶ Require a requestor to fill out an application
    - ▶ Require the request be placed in writing
    - ▶ Require the requestor to identify him/herself
    - ▶ Require the requestor to state why the records are wanted
    - ▶ Delay requests for any longer than reasonable given the request
    - ▶ Have automatic delays until affected parties are alerted
- Requests should be made to the custodian of the record
  - Custodian is the elected or appointed officer charged with the responsibility of maintaining the office having public records, or his or her designee
  - Care should be taken to ensure all designees are trained in how to handle public records requests

## **HOW SHOULD I RESPOND TO REQUESTS?**

- **Routine vs. Complex**
  - Very routine requests are easily delegated
  - Always seek legal help, particularly where exemptions are asserted
- **Promptness required**
  - Routine delays not permitted
  - Initial response should acknowledge request, set forth time line, and if relevant communicate costs to be paid
  - While not required, written responses help protect against later allegations of non-compliance
  - Employees or other persons impacted by record requests have no legal right to be notified of or present during inspections, and delays pending notification of such persons are not lawful
- **Produce vs. comment on**
  - Only actual records must be produced
  - The law does not require staff to comment on or analyze records
  - The law does not require staff to produce records or reports which don't exist
- **Clarification of vague or expansively-worded requests**
  - If a request is too vague, initial response may be to request clarification
  - If initial request is stated very broadly, initial response may review potential expenses, and give opportunity to revise the request
- **Assertion of exemptions**
  - Exemptions must be asserted in writing and with specificity
  - Legal counsel should be sought to ensure exemptions are correctly asserted
- **Supervision when records being inspected**
  - Persons inspecting original records should never be left alone with them
  - If inspection period is lengthy, a clerical service charge may be assessed
- **Record exists in more than one agency**
  - A custodian cannot decline inspection or copying simply because the same record could also be requested by a different agency
  - Just because an exempt record may be shared with another agency for public business reasons, the record does not necessarily lose its exemption, so always check with the other agency before disclosing
- **Records held by private person or entity doing business for or with government**
  - Such records are still "public records" and should be maintained as such
  - The private person or entity is bound to comply with the Act just as a government must
  - Best practice to make such persons or entities aware of this area when conducting contract negotiations

## **COSTS OF THE REQUEST**

- Copy charges
  - Copies of regular sized paper, the charge is 15 cents per page
  - Unusual items such as maps, photos or tapes, actual cost of duplication may be charged
- Special service charges
  - A special service charge may be charged where the request requires use of extensive (usually 2 hours) information technology resources or clerical staff
  - The charge assessed for staff time must be at the lowest hourly rate of the employee capable of performing the task, even if that employee is not the actual employee performing the task
  - Estimates of costs should be developed in good faith
- Payment in advance
  - Where significant charges will be due, the law permits work on the request to begin "*upon payment*" of the good faith estimate of the charges
  - Unused deposit amounts should be refunded promptly

## **ELECTRONIC RECORDS AND AUTOMATION ISSUES**

- When designing or acquiring electronic record-keeping systems, local governments must consider whether the system can provide data in a common format, such as American Standard Code for Information Exchange
- Local governments can't use proprietary software to diminish the right to inspect and copy records
- Local governments must provide a copy of the record in the medium requested if they maintain the records in that medium
- Electronically stored records are as much a public record as a paper record in a file cabinet
  - Types of electronic records subject to inspection include:

Electronic calendars

Databases

Word processing files

E mail

Internet use history

Government-issued cell phone use history

## **EXEMPTIONS OF NOTE FOR PUBLIC OFFICIALS**

- Risk assessments and security plans
- Audit workpapers, notes and draft reports (until audit becomes final)
- Blueprints of public buildings
- Sealed bids (until all bids are opened)
- Booking business records of a public convention center or sports facility
- Business location or expansion plans related to economic development packages
- Whistle blower and discrimination investigation records (until investigation concluded)
- Attorney work product related to litigation
- Social Security Numbers
- Personal contact information for police and code officers, judges, firefighters and HR managers

## TRADE SECRETS

Florida Statute § 815.045, entitled *Trade secret information*, provides:

The Legislature finds that it is a public necessity that trade secret information as defined in s. 812.081, and as provided for in s. 815.04(3), be expressly made confidential and exempt from the public records law because it is a felony to disclose such records. Due to the legal uncertainty as to whether a public employee would be protected from a felony conviction if otherwise complying with chapter 119, and with s. 24(a), Art. I of the State Constitution, it is imperative that a public records exemption be created. The Legislature in making disclosure of trade secrets a crime has clearly established the importance attached to trade secret protection. Disclosing trade secrets in an agency's possession would negatively impact the business interests of those providing an agency such trade secrets by damaging them in the marketplace, and those entities and individuals disclosing such trade secrets would hesitate to cooperate with that agency, which would impair the effective and efficient administration of governmental functions. Thus, the public and private harm in disclosing trade secrets significantly outweighs any public benefit derived from disclosure, and the public's ability to scrutinize and monitor agency action is not diminished by nondisclosure of trade secrets.

## **What is a “Trade Secret”?**

Florida Statute § 812.081(1)(c) defines the term expansively:

“Trade secret” means the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. “Trade secret” includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

1. Secret;
2. Of value;
3. For use or in use by the business; and
4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

## **Criminal penalty for revealing:**

Florida Statute § 812.081 provides that it is a 3<sup>rd</sup> degree felony for anyone, including a public official, to copy a trade secret for themselves or another person.

## **WHEN CAN I DESTROY A PUBLIC RECORD?**

Florida law requires all public records to be maintained pursuant to a Records Retention Schedule published by the Department of State, Division of Library Sciences, Information Services Division

- Visit [http://dls.dos.state.fl.us/recordsmgmt/gen\\_records\\_schedules.cfm](http://dls.dos.state.fl.us/recordsmgmt/gen_records_schedules.cfm)
- Select Schedule GS1-SL (State and Local Government Agencies)

## **PENALTIES FOR NON-COMPLIANCE**

- Civil suit including payment of requestor's attorney fees
- One year in prison and/or \$1,000 fine
- Removal from office or employment by the Governor
- If an appointed official, removal from office by the local Commission

## RECORDS OF PRIVATE CONTRACTORS

### 119.0701. Contracts; public records (effective July 1, 2013)

(1) For purposes of this section, the term:

(a) "Contractor" means an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2).

(b) "Public agency" means a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law.

(2) In addition to other contract requirements provided by law, each public agency contract for services must include a provision that requires the contractor to comply with public records laws, specifically to:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

(3) If a contractor does not comply with a public records request, the public agency shall enforce the contract provisions in accordance with the contract.

## **ADMINISTRATIVE PROCEDURES**

It is advisable for every agency subject to the Records Act to adopt usable guidelines for front line staff to review and follow when responding to records requests. Attached as an appendix to this outline is the current version of Manatee County's administrative procedure on staff responses to requests.

## **2014 LEGISLATIVE UPDATE**

Review of 2014 legislative session and any bills passed related to the Records Act will be provided.

**LAWFUL AND UNLAWFUL  
EXPENDITURES OF PUBLIC MONIES**

**Legal Standards of Fiscal Responsibility  
Manatee County Attorney's Office Seminar  
June 9, 2014**

*Presented by*  
William E. Clague, Assistant County Attorney

**I. History.**

1. 130-Year Tradition. Florida has a 130-year history of strong standards of fiscal responsibility in local government.
2. Origin. In the 1880s, several Florida local governments became fiscally insolvent as a result of speculative borrowing to finance real estate development.
3. 1885 Constitution. In response, the Florida Constitution of 1885, and the statutory law implementing it, included strict controls on the pledging of public credit and use of public funds. The restrictions in the 1885 Florida Constitution formed the basis of "Dillon's Rule", by which local governments had very narrow authority to issue debt or expend funds.
4. 1968 Constitution. The Florida Constitution of 1968, and the statutory law implementing it, further refined these restrictions. The 1968 Florida Constitution incorporated the concept of "Home Rule" authority for local governments, which provides more flexibility in the issuance of debt and expenditure of funds, within constitutional and statutory limits.

**II. Public Purpose Doctrine.**

1. Florida Constitutional Basis. Article VII, Section 10 of the Florida Constitution provides that "[n]either the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person . . ." This language, commonly referred to as the "Public Purpose Doctrine", has been broadly construed by the Florida courts to prohibit any transaction by a local government that fails to serve a public purpose. Art. VII, § 10, Fla. Const.
2. Interpretation. The Public Purpose Doctrine is fluid and evolving. "Public Purpose" can mean different things in different contexts. Each transaction must be carefully analyzed on its merits to assure compliance with the Public Purpose Doctrine. See *Poe v. Hillsborough County*, 695 So.2d 672 (Fla. 1997).

3. Pledge of Credit. The Florida courts have ruled that a transaction that involves the “pledging of credit” by a local government must serve a “paramount public purpose”, and only “incidental private benefits”. A transaction that renders the County and the taxpayers liable for the failure or default in performance by a third party will be treated as illegal if a private party received more than an incidental benefit. Once a court concludes a transaction results in a pledge of credit, it will carefully scrutinize any benefits that may accrue to a private party. *Orange County Indus. Development Authority v. State*, 427 So.2d 174 (Fla. 1983).
4. No Pledge of Credit. The Florida courts have ruled that a transaction that does not involve the “pledging of credit” by a local government does not need to serve a paramount public purpose. In such cases, a private party may be the primary beneficiary of the transaction so long as there are also substantial and identifiable benefits to the public. *Linscott v. Orange County*, 443 So.2d 97 (Fla. 1983).
5. Statutory “Safe Harbors”. The Florida Legislature has enacted numerous statutes that provide legislative “safe harbor” transactions that are presumed to satisfy the Public Purpose Doctrine as long as the statutory requirements are met:
  - a. Tax Abatement / Economic Development Transactions (Art. VII, § 3, Fla. Const.; §§ 125.045, 196.1995, Fla. Stat.(2013));
  - b. Land Development Agreements (§ 163.3221, Fla. Stat.(2013));
  - c. Public-Private Partnerships (§§ 287.05712, 334.30, Fla. Stat.(2013);
  - d. Industrial Development Bonds (Part II, Ch. 159, Fla. Stat.(2013); and
  - e. Competitively Awarded Contracts §§ 255.20, 287.055, 336.41 & 336.44, Fla. Stat. (2013).
6. Technical Compliance. Compliance with the technical requirements of Florida Statutes for each of these “safe harbor” transactions is extremely important from a legal standpoint because it protects the County, and the individual Board members and County officers, from a legal claim that the transaction violates the Public Purpose Doctrine or related statutes.

### **III. Debts of the County (Pledge of Credit).**

1. Bonded Debt. Debts of the County are typically referred to as “bonded debt” or “bonds” (even when in the form of a direct loan or other debt not sold as securities). Most bonded debt is secured by a pledge of, and lien upon, County

revenues, which can confer upon third parties the right to compel the County to levy and/or expend revenues. See e.g. (§ 159.02(6), Fla. Stat.(2013).

2. General Obligation Bonds. General obligation bonds are secured by pledge of the general revenues of the County, such that the bond holders have the right to require the County to raise property taxes in order to pay the debt service on the bonds. Accordingly, Article VII, Section 10 of the Florida Constitution requires that general obligation bonds cannot be issued by the County unless first approved by the electors in a public referendum. Art. VII, § 12, Fla. Const.; § 125.013, Fla. Stat.(2013).
3. Revenue Bonds. Revenue bonds are bonds secured by a pledge of non-ad valorem revenues, or a covenant to budget and appropriate non-ad valorem revenues, and do not confer upon bond holders the right to require the County to raise property taxes to pay debt service on the bonds. Accordingly, no referendum is required for the County to issue revenue bonds or other forms of non-ad valorem debt. § 125.013, Fla. Stat. (2013).
4. Federal Tax and Securities Laws. The Internal Revenue Code and Federal securities laws impose additional legal requirements on the issuance of bonds and the investment and expenditure of bond proceeds. The County relies extensively on the expertise of the County's Bond Counsel to assure compliance with such laws.
5. Implied Debts. While the issuance of bonds is generally beyond the scope of this presentation, it is possible for a contract to be construed by the courts as "bonded debt" of the County (and therefore an illegal or unenforceable contract) even though neither party intended to create a debt of the County. *Frankenmuth Mut. Ins. Co. v. Magaha*, 769 So.2d 1012 (Fla. 2000).

#### **IV. Limitations on Expenditures and Use of Public Funds.**

1. Numerous Statutory Provisions. In furtherance of the Public Purpose Doctrine, the Florida Legislature has enacted numerous restrictions on incurring public debt, budgeting revenues and expenditures, and investing, managing and using public funds.
2. Taxes for County Purposes Only. Section 125.01(1)(r), *Florida Statutes*, authorizes the levy and collection of taxes only for "county purposes" and for providing "municipal services". § 125.01(1)(r), Fla. Stat.(2013).

3. Limited Budget. Chapter 129, *Florida Statutes*, requires that the County adopt a budget annually (or bi-annually) that establishes budgeted expenditures, and accounts for debt service payments and budget reserves, based upon anticipated revenues. Ch. 129, Fla. Stat. (2013).
4. No Advancing of Funds. Section 125.09, *Florida Statutes*, requires that the County account for the legal use of public funds as they are expended, and has been construed to generally prohibit “advancing” of funds in most instances. § 125.09, Fla. Stat. (2013).
5. Clerk as Custodian of Funds. Section 129.025, *Florida Statutes*, requires that the Clerk act as the comptroller of the County, maintaining custody and control over all County moneys, and investing them in accordance with applicable law. § 129.025, Fla. Stat. (2013).
6. CAFR. Section 218.39, *Florida Statutes*, requires that the Clerk and County, at the end of each fiscal year, prepare and publish a certified audited financial report (CAFR) documenting the collection, management and use of all County Revenues. § 218.39, Fla. Stat. (2013).
7. Limitations on Contracts; Personal Liability. Section 129.07, *Florida Statutes*, prohibits contracts in excess of budgeted revenues and provides that county commissioners are personally liable for such contracts. § 129.07, Fla. Stat. (2013).
8. Limitations on Contracts; Criminal Consequences. Section 129.08, *Florida Statutes*, provides that county commissioners that approve (i) contracts in excess of budgeted funds or (ii) illegal charges against a county can be (a) suspended or removed from office and/or (b) found guilty of a misdemeanor. § 129.08, Fla. Stat. (2013).
9. Liability of Clerk; Criminal Consequences. Section 129.09, *Florida Statutes*, provides that the Clerk, as the County’s budget officer, is (a) personally liable for the use of County funds to pay illegal or unauthorized expenditures, and (b) guilty of a misdemeanor if he or she willfully and knowingly pays illegal or unauthorized expenditures. § 129.09, Fla. Stat. (2013).
10. Broad Scope. These restrictions on the budgeting and use of County moneys are often taken for granted in the day-to-day running of the County. It is important to understand, however, that when they are applied together with the Public Purpose Doctrine, they provide for a tightly controlled system of fiscal accountability. It is surprising how often a proposed transaction will run afoul of one or more of

them, simply because most people who are not heavily involved in public finance are unfamiliar with many of them.

## V. Examples.

1. Impact Fees.
  - a. Funds must be used to “benefit” development that paid fees;
  - b. Funds must be used to pay the cost of capital facilities; and
  - c. Funds must be used within a reasonable time period after collection.
2. Bond Proceeds.
  - a. Funds must be used in accordance with Internal Revenue Code (spend down, public purpose, limitations on payment investment earning, payment of costs of issuance, etc.);
  - b. Funds must be used to pay capital expenditures; and
  - c. Funds must be used to pay expenditures that are legally authorized uses of the revenues pledged to the debt service on the bonds.
3. Economic Development Incentives.
  - a. Funds must be used for economic development (creation of qualifying job positions);
  - b. The transaction in many cases *must* include, and in all cases *should* include, performance obligations of the recipient; and
  - c. The transaction must include tracking and reporting of performance by the recipient, and some level of reporting by the County to the State.
4. Real Estate: Non-Profit Organizations.
  - a. The purpose of the transaction (i.e. the service to be provided to the community by the non-profit) must also be a valid public purpose;
  - b. The transaction must include performance covenants to provide service to community;
  - c. The transaction should include covenants to maintain non-profit status; and

- d. The transaction should include reporting and accounting for use of funds.
5. Real Estate; For-Profit Organizations.
- a. Competitive award (bid sale or “competitive negotiation”);
  - b. In competitive negotiations, the purpose of the transaction (i.e. the service to be provided to the community by the recipient) must also be a valid public purpose;
  - c. In competitive negotiations, the transaction should include performance covenants on the part of the recipient; and
  - d. The transaction should include reporting and accounting for use of the property.

## **VI. Delegations of Contractual Authority.**

1. Contract Powers in General. Florida counties possess the home-rule authority to enter into contracts in accordance with general law. This authority is vested in the County’s Board of County Commissioners, as the “legislative and governing body” of the County. Absent delegation of such authority, the Board, and only the Board, may approve and authorize the execution of a contract that is legally binding upon the County. §§ 125.01(1) & (3)(a) Fla. Stat. (2013).
2. Delegation of Contract Powers. Florida law does, however, recognize that the Board may delegate contractual authority to officers or staff of the County so long as it does not delegate its “discretionary powers”, which have been defined by the Florida Attorney General as “those powers that [involve] the exercise of independent judgment and discretion”. AGO 88-61 (citing § 125.74(1) Fla. Stat.).
3. Documentation. The County should document any delegation of contractual authority in an instrument approved by the Board, such as an ordinance (the Procurement Code, for example), resolution or motion. Without exception, County officials and staff should never execute a contract of the County without documented authority from the Board (preferably in the form of a resolution, but at the very least, in the form of a motion recorded in the Board’s official records by the Clerk).
4. Parameters. Any delegation of contractual authority should contain parameters that limit the discretion of the individual exercising such authority. Such parameters may pertain to one or more of:
  - a. The subject matter of the transaction;

2. Written Instrument. Contracts should always be by written instrument. Florida law does recognize unwritten contracts in some instances, and does, in theory, allow local governments to enter into such contracts. Without a written instrument, however, it is not possible to document the legality of the use of public funds and resources of the County, or the public purpose furthered by the transaction.
3. Recitals. Every governing instruments (i.e. an ordinance, resolution or contract) should include recitals (a.k.a. “whereas clauses”) identifying the legal authority (preferably a Florida statute), public purpose and general nature of the relationship between the County and third parties.
4. Performance Obligations. If the public purpose depends upon the actions of a third party (such as a non-profit providing a community service, or an economic development business providing jobs), there should be a written contract between the County and the third party that imposes legally enforceable performance obligations upon the third party, and authorizes the County to “unwind” the relationship if the third party fails to perform.
5. Reporting and Accounting Obligations. If the transaction involves providing public dollars to a third party, there should be a written contract between the County and the third party that imposes legally enforceable obligations upon the third party to allow for accounting, reporting and auditing of the uses of the funds.
6. Varying Language. The necessary language of governing instruments may vary from transaction to transaction depending upon:
  - a. The specific public purpose;
  - b. The applicable statutory authority
  - c. The revenue source; and
  - d. The structure of the transaction.

#### **VIII. Conclusion.**

1. Complexity, Purpose. The Florida legal standards for fiscal responsibility are complex and far-reaching, and can apply in a wide range of circumstances. They are, at times, difficult to understand and follow, such that a certain degree of expertise is required on the part of fiscal officers and attorneys to make sure that they are observed. But they are in place for good reason. The resulting business

practices, accounting practices and legal practices are designed to protect the taxpayers, the County as an whole, and the individual commissioners and employees.

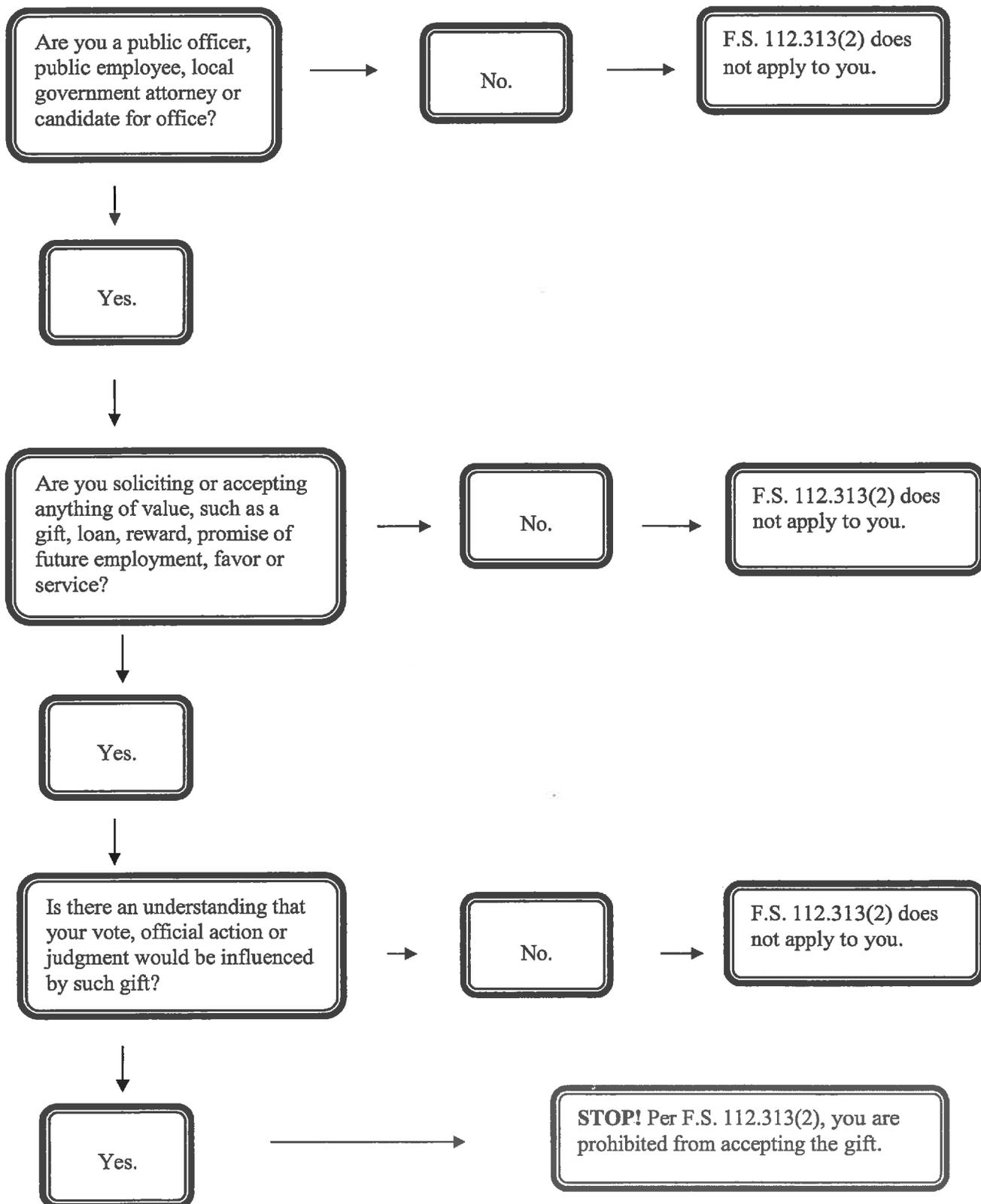
2. Merit. Shortly after the 2008 real estate crash, the financial markets anticipated a crash in Florida local governments in the form of bond defaults or even bankruptcies, similar to the experiences of the 1880s and 1920s. While most Florida local governments experienced significant financial stress, none went bankrupt, and very few defaulted on their debts. Many CDDs (which are isolated developer-controlled units of government) and some “conduit bond issues” (which are bond secured by obligations of private organizations), did go under, but did not result in liability to the taxpayers. Therefore, the standards of fiscal responsibility set forth in the Florida Constitution and Florida Statutes worked well under very trying of circumstances.

**ETHICS FOR ELECTED  
AND APPOINTED OFFICIALS**

**SOLICITATION AND ACCEPTANCE OF GIFTS**

June 9, 2014

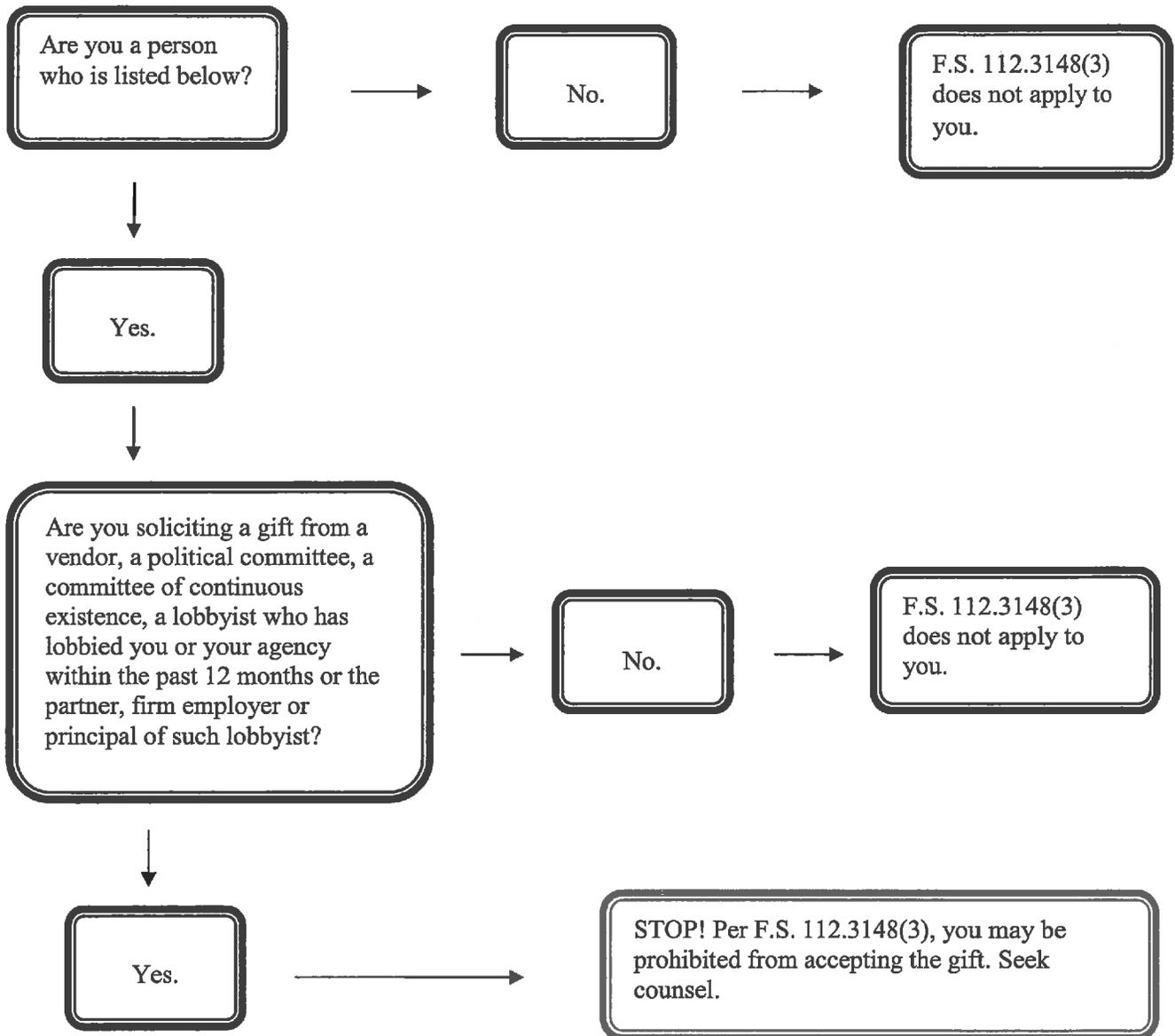
Flowchart Prepared by: Mitchell O. Palmer, County Attorney



**SOLICITATION AND ACCEPTANCE OF GIFTS**

**June 9, 2014**

**Flowchart Prepared by: Mitchell O. Palmer, County Attorney**

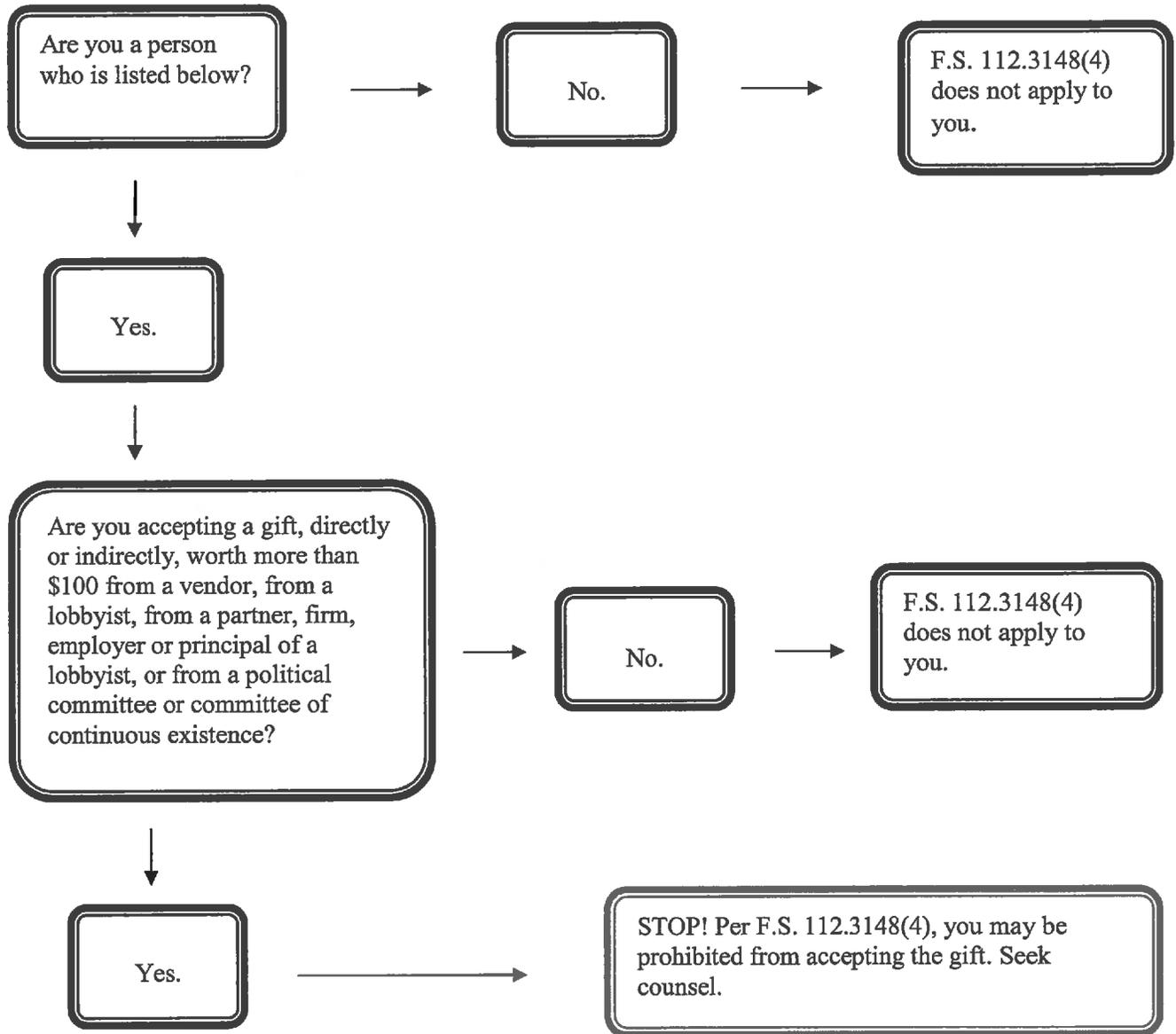


Affected persons: County commissioners, city commissioners, school board members, constitutional officers, code enforcement board members, planning commission members, pension board members, mayors, county administrators, city managers, county and city attorneys, building officials, police chiefs fire chiefs, city clerks, school superintendents, candidates and candidates-elect for local office, and purchasing officials for local governments. Note that this not an exhaustive list; see F.S. 112.3145.

**SOLICITATION AND ACCEPTANCE OF GIFTS**

**June 9, 2014**

**Flowchart Prepared by: Mitchell O. Palmer, County Attorney**



Affected persons: County commissioners, city commissioners, school board members, constitutional officers, code enforcement board members, planning commission members, pension board members, mayors, county administrators, city managers, county and city attorneys, building officials, police chiefs, fire chiefs, city clerks, school superintendents, candidates and candidates-elect for local office, and purchasing officials for local governments. Note that this is not an exhaustive list; see F.S. 112.3145.

# FLORIDA COMMISSION ON ETHICS



## GUIDE to the SUNSHINE AMENDMENT and CODE of ETHICS for Public Officers and Employees

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**2014**

# State of Florida COMMISSION ON ETHICS

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**FLORIDA COMMISSION ON ETHICS**  
**GUIDE TO THE SUNSHINE AMENDMENT**  
**and**  
**CODE OF ETHICS**  
**for**  
**PUBLIC OFFICERS and EMPLOYEES**

**I. HISTORY OF FLORIDA'S ETHICS LAWS**

Florida has been a leader among the states in establishing ethics standards for public officials and recognizing the right of citizens to protect the public trust against abuse. Our state Constitution was revised in 1968 to require a code of ethics, prescribed by law, for all state employees and non-judicial officers prohibiting conflict between public duty and private interests.

Florida's first successful constitutional initiative resulted in the adoption of the Sunshine Amendment in 1976, providing additional constitutional guarantees concerning ethics in government. In the area of enforcement, the Sunshine Amendment requires that there be an independent commission (the Commission on Ethics) to investigate complaints concerning breaches of public trust by public officers and employees other than judges.

The Code of Ethics for Public Officers and Employees is found in Chapter 112 (Part III) of the Florida Statutes. Foremost among the goals of the Code is to promote the public interest and maintain the respect of the people for their government. The Code is also intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law. While seeking to protect the integrity of government, the Code also seeks to avoid the creation of unnecessary barriers to public service.

Criminal penalties, which initially applied to violations of the Code, were eliminated in 1974 in favor of administrative enforcement. The Legislature created the Commission on Ethics that year "to serve as guardian of the standards of conduct" for public officials, state and local. Five of the Commission's nine members are appointed by the Governor, and two each are appointed by the President of the Senate and Speaker of the House of Representatives. No more than five Commission members may be members of the same political party, and none may be lobbyist, or hold any public employment during their two-year terms of office. A chair is selected from among the members to serve a one-year term and may not succeed himself or herself.

**II. ROLE OF THE COMMISSION ON ETHICS**

In addition to its constitutional duties regarding the investigation of complaints, the Commission:

- Renders advisory opinions to public officials;
- Prescribes forms for public disclosure;
- Prepares mailing lists of public officials subject to financial disclosure for use by Supervisors of Elections and the Commission in distributing forms and notifying delinquent filers;

- Makes recommendations to disciplinary officials when appropriate for violations of ethics and disclosure laws, since it does not impose penalties;
- Administers the Executive Branch Lobbyist Registration and Reporting Law;
- Maintains financial disclosure filings of constitutional officers and state officers and employees; and,
- Administers automatic fines for public officers and employees who fail to timely file required annual financial disclosure.

### III. THE ETHICS LAWS

The ethics laws generally consist of two types of provisions, those prohibiting certain actions or conduct and those requiring that certain disclosures be made to the public. The following descriptions of these laws have been simplified, in an effort to put people on notice of their requirements. Therefore, we also suggest that you review the wording of the actual law. Citations to the appropriate laws are contained in brackets.

The laws summarized below apply generally to all public officers and employees, state and local, including members of advisory bodies. The principal exception to this broad coverage is the exclusion of judges, as they fall within the jurisdiction of the Judicial Qualifications Commission.

Public Service Commission (PSC) members and employees, as well as members of the PSC Nominating Council, are subject to additional ethics standards that are enforced by the Commission on Ethics under Chapter 350, Florida Statutes. Further, members of the governing boards of charter schools are subject to some of the provisions of the Code of Ethics [Sec. 1002.33(26), Fla. Stat.], as are the officers, directors, chief executive officers and some employees of business entities that serve as the chief administrative or executive officer or employee of a political subdivision. [Sec. 112.3136, Fla. Stat.]

#### A. PROHIBITED ACTIONS OR CONDUCT

##### 1. *Solicitation and Acceptance of Gifts*

Public officers, employees, local government attorneys, and candidates are prohibited from soliciting or accepting anything of value, such as a gift, loan, reward, promise of future employment, favor, or service, that is based on an understanding that their vote, official action, or judgment would be influenced by such gift. [Sec. 112.313(2), Fla. Stat.]

Persons required to file financial disclosure FORM 1 or FORM 6 (see Part III F of this brochure), and state procurement employees, are prohibited from **soliciting** any gift from a political committee, lobbyist who has lobbied the official or his or her agency within the past 12 months, or the partner, firm, employer, or principal of such a lobbyist or from a vendor doing business with the official's agency. [Sec. 112.3148, Fla. Stat.]

Persons required to file FORM 1 or FORM 6, and state procurement employees are prohibited from directly or indirectly **accepting** a gift worth more than \$100 from such a lobbyist, from a partner, firm, employer, or principal of the lobbyist, or from a political committee or vendor doing business with their agency. [Sec. 112.3148, Fla. Stat.]

**However**, effective in 2006 and notwithstanding Sec. 112.3148, Fla. Stat., no Executive Branch lobbyist or principal shall make, directly or indirectly, and no Executive Branch agency official who files FORM 1 or FORM 6 shall knowingly accept, directly or indirectly, **any expenditure** made for the purpose of lobbying.

[Sec. 112.3215, Fla. Stat.] Typically, this would include gifts valued at less than \$100 that formerly were permitted under Section 112.3148, Fla. Stat. Similar rules apply to members and employees of the Legislature. However, these laws are not administered by the Commission on Ethics. [Sec. 11.045, Fla. Stat.]

Also, effective May 1, 2013, persons required to file Form 1 or Form 6, and state procurement employees and members of their immediate families, are prohibited from accepting any gift from a political committee. [Sec. 112.31485, Fla. Stat.]

## *2. Unauthorized Compensation*

Public officers or employees, local government attorneys, and their spouses and minor children are prohibited from accepting any compensation, payment, or thing of value when they know, or with the exercise of reasonable care should know, that it is given to influence a vote or other official action. [Sec. 112.313(4), Fla. Stat.]

## *3. Misuse of Public Position*

Public officers and employees, and local government attorneys are prohibited from corruptly using or attempting to use their official positions or the resources thereof to obtain a special privilege or benefit for themselves or others. [Sec. 112.313(6), Fla. Stat.]

## *4. Disclosure or Use of Certain Information*

Public officers and employees and local government attorneys are prohibited from disclosing or using information not available to the public and obtained by reason of their public position for the personal benefit of themselves or others. [Sec. 112.313(8), Fla. Stat.]

## *5. Solicitation or Acceptance of Honoraria*

Persons required to file financial disclosure FORM 1 or FORM 6 (see Part III F of this brochure), and state procurement employees, are prohibited from **soliciting** honoraria related to their public offices or duties. [Sec. 112.3149, Fla. Stat.]

Persons required to file FORM 1 or FORM 6, and state procurement employees, are prohibited from knowingly **accepting** an honorarium from a political committee, lobbyist who has lobbied the person's agency within the past 12 months, or the partner, firm, employer, or principal of such a lobbyist, or from a vendor doing business with the official's agency. However, he or she may accept the payment of expenses related to an honorarium event from such individuals or entities, provided that the expenses are disclosed. See Part III F of this brochure. [Sec. 112.3149, Fla. Stat.]

Lobbyists and their partners, firms, employers, and principals, as well as political committees and vendors, are prohibited from **giving** an honorarium to persons required to file FORM 1 or FORM 6 and to state procurement employees. Violations of this law may result in fines of up to \$5,000 and prohibitions against lobbying for up to two years. [Sec. 112.3149, Fla. Stat.]

However, notwithstanding Sec. 112.3149, Fla. Stat., no Executive Branch or legislative lobbyist or principal shall make, directly or indirectly, and no Executive Branch agency official who files FORM 1 or FORM 6 shall

knowingly accept, directly or indirectly, **any expenditure** made for the purpose of lobbying. [Sec. 112.3215, Fla. Stat.] This may include honorarium event related expenses that formerly were permitted under Sec. 112.3149, Fla. Stat. Similar rules apply to members and employees of the Legislature. However, these laws are not administered by the Commission on Ethics. [Sec. 11.045, Fla. Stat.]

## **B. PROHIBITED EMPLOYMENT AND BUSINESS RELATIONSHIPS**

### **1. *Doing Business With One's Agency***

(a) A public employee acting as a purchasing agent, or public officer acting in an official capacity, is prohibited from purchasing, renting, or leasing any realty, goods, or services for his or her agency from a business entity in which the officer or employee or his or her spouse or child owns more than a 5% interest. [Sec. 112.313(3), Fla. Stat.]

(b) A public officer or employee, acting in a private capacity, also is prohibited from renting, leasing, or selling any realty, goods, or services to his or her own agency if the officer or employee is a state officer or employee, or, if he or she is an officer or employee of a political subdivision, to that subdivision or any of its agencies. [Sec. 112.313(3), Fla. Stat.]

### **2. *Conflicting Employment or Contractual Relationship***

(a) A public officer or employee is prohibited from holding any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. [Sec. 112.313(7), Fla. Stat.]

(b) A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will pose a frequently recurring conflict between the official's private interests and public duties or which will impede the full and faithful discharge of the official's public duties. [Sec. 112.313(7), Fla. Stat.]

(c) Limited exceptions to this prohibition have been created in the law for legislative bodies, certain special tax districts, drainage districts, and persons whose professions or occupations qualify them to hold their public positions. [Sec. 112.313(7)(a) and (b), Fla. Stat.]

### **3. *Exemptions—Pursuant to Sec. 112.313(12), Fla. Stat., the prohibitions against doing business with one's agency and having conflicting employment may not apply:***

(a) When the business is rotated among all qualified suppliers in a city or county.

(b) When the business is awarded by sealed, competitive bidding and neither the official nor his or her spouse or child have attempted to persuade agency personnel to enter the contract. NOTE: Disclosure of the interest of the official, spouse, or child and the nature of the business must be filed prior to or at the time of submission of the bid on Commission FORM 3A with the Commission on Ethics or Supervisor of Elections, depending on whether the official serves at the state or local level.

(c) When the purchase or sale is for legal advertising, utilities service, or for passage on a common carrier.

(d) When an emergency purchase must be made to protect the public health, safety, or welfare.

(e) When the business entity is the only source of supply within the political subdivision and there is full disclosure of the official's interest to the governing body on Commission FORM 4A.

(f) When the aggregate of any such transactions does not exceed \$500 in a calendar year.

(g) When the business transacted is the deposit of agency funds in a bank of which a county, city, or district official is an officer, director, or stockholder, so long as agency records show that the governing body has determined that the member did not favor his or her bank over other qualified banks.

(h) When the prohibitions are waived in the case of ADVISORY BOARD MEMBERS by the appointing person or by a two-thirds vote of the appointing body (after disclosure on Commission FORM 4A).

(i) When the public officer or employee purchases in a private capacity goods or services, at a price and upon terms available to similarly situated members of the general public, from a business entity which is doing business with his or her agency.

(j) When the public officer or employee in a private capacity purchases goods or services from a business entity which is subject to the regulation of his or her agency where the price and terms of the transaction are available to similarly situated members of the general public and the officer or employee makes full disclosure of the relationship to the agency head or governing body prior to the transaction.

#### *4. Additional Exemptions*

No elected public officer is in violation of the conflicting employment prohibition when employed by a tax exempt organization contracting with his or her agency so long as the officer is not directly or indirectly compensated as a result of the contract, does not participate in any way in the decision to enter into the contract, abstains from voting on any matter involving the employer, and makes certain disclosures. [Sec. 112.313(15), Fla. Stat.] A qualified blind trust established pursuant to Sec. 112.31425, Fla. Stat., may afford an official protection from conflicts of interest arising from assets placed in the trust.

#### *5. Lobbying State Agencies By Legislators*

A member of the Legislature is prohibited from representing another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals. [Art. II, Sec. 8(e), Fla. Const., and Sec. 112.313(9), Fla. Stat.]

#### *6. Employees Holding Office*

A public employee is prohibited from being a member of the governing body which serves as his or her employer. [Sec. 112.313(10), Fla. Stat.]

#### *7. Professional and Occupational Licensing Board Members*

An officer, director, or administrator of a state, county, or regional professional or occupational organization or association, while holding such position, may not serve as a member of a state examining or

licensing board for the profession or occupation. [Sec. 112.313(11), Fla. Stat.]

**8. Contractual Services: Prohibited Employment**

A state employee of the executive or judicial branches who participates in the decision-making process involving a purchase request, who influences the content of any specification or procurement standard, or who renders advice, investigation, or auditing, regarding his or her agency's contract for services, is prohibited from being employed with a person holding such a contract with his or her agency. [Sec. 112.3185(2), Fla. Stat.]

**9. Local Government Attorneys**

Local government attorneys, such as the city attorney or county attorney, and their law firms are prohibited from representing private individuals and entities before the unit of local government which they serve. A local government attorney cannot recommend or otherwise refer to his or her firm legal work involving the local government unit unless the attorney's contract authorizes or mandates the use of that firm. [Sec. 112.313(16), Fla. Stat.]

**10. Dual Public Employment**

Candidates and elected officers are prohibited from accepting public employment if they know or should know it is being offered for the purpose of influence. Further, public employment may not be accepted unless the position was already in existence or was created without the anticipation of the official's interest was publicly advertised, and the officer had to meet the same qualifications and go through the same hiring process as other applicants.

For elected public officers already holding public employment, no promotion given for the purpose of influence may be accepted, nor may promotions that are inconsistent with those given other similarly situated employees.

**C. RESTRICTIONS ON APPOINTING, EMPLOYING, AND CONTRACTING WITH RELATIVES**

**1. Anti-Nepotism Law**

A public official is prohibited from seeking for a relative any appointment, employment, promotion or advancement in the agency in which he or she is serving or over which the official exercises jurisdiction or control. No person may be appointed, employed, promoted, or advanced in or to a position in an agency if such action has been advocated by a related public official who is serving in or exercising jurisdiction or control over the agency; this includes relatives of members of collegial government bodies. NOTE: This prohibition does not apply to school districts (except as provided in Sec. 1012.23, Fla. Stat.), community colleges and state universities, or to appointments of boards, other than those with land-planning or zoning responsibilities, in municipalities of fewer than 35,000 residents. Also, the approval of budgets does not constitute "jurisdiction or control" for the purposes of this prohibition. This provision does not apply to volunteer emergency medical, firefighting, or police service providers. [Sec. 112.3135, Fla. Stat.]

## 2. *Additional Restrictions*

A state employee of the executive or judicial branch or the PSC is prohibited from directly or indirectly procuring contractual services for his or her agency from a business entity of which a relative is an officer, partner, director, or proprietor, or in which the employee, or his or her spouse, or children own more than a 5% interest. [Sec. 112.3185(6), Fla. Stat.]

## **D. POST OFFICE HOLDING AND EMPLOYMENT (REVOLVING DOOR) RESTRICTIONS**

### 1. *Lobbying by Former Legislators, Statewide Elected Officers, and Appointed State Officers*

A member of the Legislature or a statewide elected or appointed state official is prohibited for two years following vacation of office from representing another person or entity for compensation before the government body or agency of which the individual was an officer or member, and also from lobbying the executive branch. [Art. II, Sec. 8(e), Fla. Const. and Sec. 112.313(9), Fla. Stat.]

### 2. *Lobbying by Former State Employees*

Certain employees of the executive and legislative branches of state government are prohibited from personally representing another person or entity for compensation before the agency with which they were employed for a period of two years after leaving their positions, unless employed by another agency of state government. [Sec. 112.313(9), Fla. Stat.] These employees include the following:

(a) Executive and legislative branch employees serving in the Senior Management Service and Selected Exempt Service, as well as any person employed by the Department of the Lottery having authority over policy or procurement.

(b) Persons serving in the following position classifications: the Auditor General; the director of the Office of Program Policy Analysis and Government Accountability (OPPAGA); the Sergeant at Arms and Secretary of the Senate; the Sergeant at Arms and Clerk of the House of Representatives; the executive director and deputy executive director of the Commission on Ethics; an executive director, staff director, or deputy staff director of each joint committee, standing committee, or select committee of the Legislature; an executive director, staff director, executive assistant, legislative analyst, or attorney serving in the Office of the President of the Senate, the Office of the Speaker of the House of Representatives, the Senate Majority Party Office, the Senate Minority Party Office, the House Majority Party Office, or the House Minority Party Office; the Chancellor and Vice-Chancellors of the State University System; the general counsel to the Board of Regents; the president, vice presidents, and deans of each state university; any person hired on a contractual basis and having the power normally conferred upon such persons, by whatever title; and any person having the power normally conferred upon the above positions.

This prohibition does not apply to a person who was employed by the Legislature or other agency prior to July 1, 1989; who was a defined employee of the SUS or the PSC who held such employment on December 31, 1994; or who reached normal retirement age and retired by July 1, 1991. It does apply to OPS employees.

**PENALTIES:** Persons found in violation of this section are subject to the penalties contained in the Code (see PENALTIES, Part V) as well as a civil penalty in an amount equal to the compensation which the person

received for the prohibited conduct. [Sec. 112.313(9)(a)5, Fla. Stat.]

### *3. Additional Restrictions on Former State Employees*

A former executive or judicial branch employee or PSC employee is prohibited from having employment or a contractual relationship, at any time after retirement or termination of employment, with any business entity (other than a public agency) in connection with a contract in which the employee participated personally and substantially by recommendation or decision while a public employee. [Sec. 112.3185(3), Fla. Stat.]

A former executive or judicial branch employee or PSC employee who has retired or terminated employment is prohibited from having any employment or contractual relationship for two years with any business entity (other than a public agency) in connection with a contract for services which was within his or her responsibility while serving as a state employee. [Sec. 112.3185(4), Fla. Stat.]

Unless waived by the agency head, a former executive or judicial branch employee or PSC employee may not be paid more for contractual services provided by him or her to the former agency during the first year after leaving the agency than his or her annual salary before leaving. [Sec. 112.3185(5), Fla. Stat.]

These prohibitions do not apply to PSC employees who were so employed on or before Dec. 31, 1994.

### *4. Lobbying by Former Local Government Officers and Employees*

A person elected to county, municipal, school district, or special district office is prohibited from representing another person or entity for compensation before the government body or agency of which he or she was an officer for two years after leaving office. Appointed officers and employees of counties, municipalities, school districts, and special districts may be subject to a similar restriction by local ordinance or resolution. [Sec. 112.313(13) and (14), Fla. Stat.]

## **E. VOTING CONFLICTS OF INTEREST**

State public officers are prohibited from voting in an official capacity on any measure which they know would inure to their own special private gain or loss. A state public officer who abstains, or who votes on a measure which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained, of the parent organization or subsidiary or sibling of a corporate principal by which he or she is retained, of a relative, or of a business associate, must make every reasonable effort to file a memorandum of voting conflict with the recording secretary in advance of the vote. If that is not possible, it must be filed within 15 days after the vote occurs. The memorandum must disclose the nature of the officer's interest in the matter.

No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss, or which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained, of the parent organization or subsidiary or sibling of a corporate principal by which he or she is retained, of a relative, or of a business associate. The officer must publicly announce the nature of his or her interest before the vote and must file a memorandum of voting conflict on Commission Form 8B with the meeting's recording officer within 15 days after the vote occurs disclosing the nature of his or her interest in the matter. However, members of community redevelopment agencies and district officers elected on a one-acre, one-vote basis are not required to abstain

when voting in that capacity.

No appointed state or local officer shall participate in any matter which would inure to the officer's special private gain or loss, the special private gain or loss of any principal by whom he or she is retained, of the parent organization or subsidiary or sibling of a corporate principal by which he or she is retained, of a relative, or of a business associate, without first disclosing the nature of his or her interest in the matter. The memorandum of voting conflict (Commission Form 8A or 8B) must be filed with the meeting's recording officer, be provided to the other members of the agency, and be read publicly at the next meeting.

If the conflict is unknown or not disclosed prior to the meeting, the appointed official must orally disclose the conflict at the meeting when the conflict becomes known. Also, a written memorandum of voting conflict must be filed with the meeting's recording officer within 15 days of the disclosure being made and must be provided to the other members of the agency with the disclosure being read publicly at the next scheduled meeting. [Sec. 112.3143, Fla. Stat.]

A qualified blind trust established pursuant to Sec. 112.31425, Fla. Stat., may afford an official protection from voting conflicts of interest arising from assets placed in the trust.

## **F. DISCLOSURES**

Conflicts of interest may occur when public officials are in a position to make decisions that affect their personal financial interests. This is why public officers and employees, as well as candidates who run for public office, are required to publicly disclose their financial interests. The disclosure process serves to remind officials of their obligation to put the public interest above personal considerations. It also helps citizens to monitor the considerations of those who spend their tax dollars and participate in public policy decisions or administration.

All public officials and candidates do not file the same degree of disclosure; nor do they all file at the same time or place. Thus, care must be taken to determine which disclosure forms a particular official or candidate is required to file.

The following forms are described below to set forth the requirements of the various disclosures and the steps for correctly providing the information in a timely manner.

### **1. FORM 1 - Limited Financial Disclosure**

#### **Who Must File:**

Persons required to file FORM 1 include all state officers, local officers, candidates for local elective office, and specified state employees as defined below (other than those officers who are required by law to file FORM 6).

#### **STATE OFFICERS include:**

1) Elected public officials not serving in a political subdivision of the state and any person appointed to fill a vacancy in such office, unless required to file full disclosure on Form 6.

2) Appointed members of each board, commission, authority, or council having statewide jurisdiction, excluding members of solely advisory bodies; but including judicial nominating commission members; directors of Enterprise Florida, Scripps Florida Funding Corporation, and Workforce Florida, and members of the Council on the Social Status of Black Men and Boys; and governors and senior managers of Citizens Property Insurance Corporation and Florida Workers' Compensation Joint Underwriting Association, board members of the Northeast Florida Regional Transportation Commission, and members of the board of Triumph Gulf Coast, Inc.

3) The Commissioner of Education, members of the State Board of Education, the Board of Governors, and the local boards of trustees and presidents of state universities.

**LOCAL OFFICERS include:**

1) Persons elected to office in any political subdivision (such as municipalities, counties, and special districts) and any person appointed to fill a vacancy in such office, unless required to file full disclosure on Form 6.

2) Appointed members of the following boards, councils, commissions, authorities, or other bodies of any county, municipality, school district, independent special district, or other political subdivision: the governing body of the subdivision; a community college or junior college district board of trustees; a board having the power to enforce local code provisions; a planning or zoning board, board of adjustments or appeals, community redevelopment agency board, or other board having the power to recommend, create, or modify land planning or zoning within the political subdivision, except for citizen advisory committees, technical coordinating committees, and similar groups who only have the power to make recommendations to planning or zoning boards; a pension board or retirement board empowered to invest pension or retirement funds or to determine entitlement to or amount of a pension or other retirement benefit.

3) Any other appointed member of a local government board who is required to file a statement of financial interests by the appointing authority or the enabling legislation, ordinance, or resolution creating the board.

4) Persons holding any of these positions in local government: mayor; county or city manager; chief administrative employee or finance director of a county, municipality, or other political subdivision; county or municipal attorney; chief county or municipal building inspector; county or municipal water resources coordinator; county or municipal pollution control director; county or municipal environmental control director; county or municipal administrator with power to grant or deny a land development permit; chief of police; fire chief; municipal clerk; appointed district school superintendent; community college president; district medical examiner; purchasing agent (regardless of title) having the authority to make any purchase exceeding \$20,000 for the local governmental unit.

5) Members of governing boards of charter schools operated by a city or other public entity.

6) The officers, directors, and chief executive officer of a corporation, partnership, or other business entity that is serving as the chief administrative or executive officer or employee of a political subdivision, and any business entity employee who is acting as the chief administrative or executive officer or employee of the political subdivision. [Sec. 112.3136, Fla. Stat.]

**SPECIFIED STATE EMPLOYEE includes:**

- 1) Employees in the Office of the Governor or of a Cabinet member who are exempt from the Career Service System, excluding secretarial, clerical, and similar positions.
- 2) The following positions in each state department, commission, board, or council: secretary or state surgeon general, assistant or deputy secretary, executive director, assistant or deputy executive director, and anyone having the power normally conferred upon such persons, regardless of title.
- 3) The following positions in each state department or division: director, assistant or deputy director, bureau chief, assistant bureau chief, and any person having the power normally conferred upon such persons, regardless of title.
- 4) Assistant state attorneys, assistant public defenders, criminal conflict and civil regional counsel, assistant criminal conflict and civil regional counsel, public counsel, full-time state employees serving as counsel or assistant counsel to a state agency, judges of compensation claims, administrative law judges, and hearing officers.
- 5) The superintendent or director of a state mental health institute established for training and research in the mental health field, or any major state institution or facility established for corrections, training, treatment, or rehabilitation.
- 6) State agency business managers, finance and accounting directors, personnel officers, grant coordinators, and purchasing agents (regardless of title) with power to make a purchase exceeding \$20,000.
- 7) The following positions in legislative branch agencies: each employee (other than those employed in maintenance, clerical, secretarial, or similar positions and legislative assistants exempted by the presiding officer of their house); and each employee of the Commission on Ethics.

**What Must Be Disclosed:**

FORM 1 requirements are set forth fully on the form. In general, this includes the reporting person's sources and types of financial interests, such as the names of employers and addresses of real property holdings. NO DOLLAR VALUES ARE REQUIRED TO BE LISTED. In addition, the form requires the disclosure of certain relationships with, and ownership interests in, specified types of businesses such as banks, savings and loans, insurance companies, and utility companies.

**When to File:**

CANDIDATES for elected local office must file FORM 1 together with and at the same time they file their qualifying papers.

STATE and LOCAL OFFICERS and SPECIFIED STATE EMPLOYEES are required to file disclosure by July 1 of each year. They also must file within thirty days from the date of appointment or the beginning of employment. Those appointees requiring Senate confirmation must file prior to confirmation.

**Where to File:**

Each LOCAL OFFICER files FORM 1 with the Supervisor of Elections in the county in which he or she permanently resides.

A STATE OFFICER or SPECIFIED STATE EMPLOYEE files with the Commission on Ethics. [Sec. 112.3145, Fla. Stat.]

**2. FORM 1F - Final Form 1 Limited Financial Disclosure**

FORM 1F is the disclosure form required to be filed within 60 days after a public officer or employee required to file FORM 1 leaves his or her public position. The form covers the disclosure period between January 1 and the last day of office or employment within that year.

**3. FORM 2 - Quarterly Client Disclosure**

The state officers, local officers, and specified state employees listed above, as well as elected constitutional officers, must file a FORM 2 if they or a partner or associate of their professional firm represent a client for compensation before an agency at their level of government.

A FORM 2 disclosure includes the names of clients represented by the reporting person or by any partner or associate of his or her professional firm for a fee or commission before agencies at the reporting person's level of government. Such representations do not include appearances in ministerial matters, appearances before judges of compensation claims, or representations on behalf of one's agency in one's official capacity. Nor does the term include the preparation and filing of forms and applications merely for the purpose of obtaining or transferring a license, so long as the issuance of the license does not require a variance, special consideration, or a certificate of public convenience and necessity.

**When to File:**

This disclosure should be filed quarterly, by the end of the calendar quarter following the calendar quarter during which a reportable representation was made. FORM 2 need not be filed merely to indicate that no reportable representations occurred during the preceding quarter; it should be filed ONLY when reportable representations were made during the quarter.

**Where To File:**

LOCAL OFFICERS file with the Supervisor of Elections of the county in which they permanently reside.

STATE OFFICERS and SPECIFIED STATE EMPLOYEES file with the Commission on Ethics. [Sec. 112.3145(4), Fla. Stat.]

**4. FORM 6 - Full and Public Disclosure**

**Who Must File:**

Persons required by law to file FORM 6 include all elected constitutional officers and candidates for such

office; the mayor and members of the city council and candidates for these offices in Jacksonville; the Duval County Superintendent of Schools; judges of compensation claims (pursuant to Sec. 440.442, Fla. Stat.); and members of the Florida Housing Finance Corporation Board and the Florida Prepaid College Board; and members of expressway authorities, transportation authorities (except the Jacksonville Transportation Authority), or toll authorities created pursuant to Ch. 348 or 343, or 349, or other general law.

What Must be Disclosed:

FORM 6 is a detailed disclosure of assets, liabilities, and sources of income over \$1,000 and their values, as well as net worth. Officials may opt to file their most recent income tax return in lieu of listing sources of income but still must disclose their assets, liabilities, and net worth. In addition, the form requires the disclosure of certain relationships with, and ownership interests in, specified types of businesses such as banks, savings and loans, insurance companies, and utility companies.

When and Where To File:

Incumbent officials must file FORM 6 annually by July 1 with the Commission on Ethics. CANDIDATES must file with the officer before whom they qualify at the time of qualifying. [Art. II, Sec. 8(a) and (i), Fla. Const., and Sec. 112.3144, Fla. Stat.]

5. *FORM 6F - Final Form 6 Full and Public Disclosure*

This is the disclosure form required to be filed within 60 days after a public officer or employee required to file FORM 6 leaves his or her public position. The form covers the disclosure period between January 1 and the last day of office or employment within that year.

6. *FORM 9 - Quarterly Gift Disclosure*

Each person required to file FORM 1 or FORM 6, and each state procurement employee, must file a FORM 9, Quarterly Gift Disclosure, with the Commission on Ethics on the last day of any calendar quarter following the calendar quarter in which he or she received a gift worth more than \$100, other than gifts from relatives, gifts prohibited from being accepted, gifts primarily associated with his or her business or employment, and gifts otherwise required to be disclosed. FORM 9 NEED NOT BE FILED if no such gift was received during the calendar quarter.

Information to be disclosed includes a description of the gift and its value, the name and address of the donor, the date of the gift, and a copy of any receipt for the gift provided by the donor. [Sec. 112.3148, Fla. Stat.]

7. *FORM 10 - Annual Disclosure of Gifts from Government Agencies and Direct-Support Organizations and Honorarium Event Related Expenses*

State government entities, airport authorities, counties, municipalities, school boards, water management districts, the South Florida Regional Transportation Authority, and the Technological Research and Development Authority may give a gift worth more than \$100 to a person required to file FORM 1 or FORM 6, and to state procurement employees, if a public purpose can be shown for the gift. Also, a direct-support organization for a governmental entity may give such a gift to a person who is an officer or employee of that entity. These gifts are to be reported on FORM 10, to be filed by July 1.

The governmental entity or direct-support organization giving the gift must provide the officer or employee with a statement about the gift no later than March 1 of the following year. The officer or employee then must disclose this information by filing a statement by July 1 with his or her annual financial disclosure that describes the gift and lists the donor, the date of the gift, and the value of the total gifts provided during the calendar year. State procurement employees file their statements with the Commission on Ethics. [Sec. 112.3148, Fla. Stat.]

In addition, a person required to file FORM 1 or FORM 6, or a state procurement employee, who receives expenses or payment of expenses related to an honorarium event from someone who is prohibited from giving him or her an honorarium, must disclose annually the name, address, and affiliation of the donor, the amount of the expenses, the date of the event, a description of the expenses paid or provided, and the total value of the expenses on FORM 10. The donor paying the expenses must provide the officer or employee with a statement about the expenses within 60 days of the honorarium event.

The disclosure must be filed by July 1, for expenses received during the previous calendar year, with the officer's or employee's FORM 1 or FORM 6. State procurement employees file their statements with the Commission on Ethics. [Sec. 112.3149, Fla. Stat.]

However, notwithstanding Sec. 112.3149, Fla. Stat., no executive branch or legislative lobbyist or principal shall make, directly or indirectly, and no executive branch agency official or employee who files FORM 1 or FORM 6 shall knowingly accept, directly or indirectly, **any expenditure** made for the purpose of lobbying. This may include gifts or honorarium event related expenses that formerly were permitted under Sections 112.3148 and 112.3149. [Sec. 112.3215, Fla. Stat.] Similar prohibitions apply to legislative officials and employees. However, these laws are not administered by the Commission on Ethics. [Sec. 11.045, Fla. Stat.] In addition, gifts, which include anything not primarily related to political activities authorized under ch. 106, are prohibited from political committees. [Sec. 112.31485 Fla. Stat.]

#### 8. *FORM 30 - Donor's Quarterly Gift Disclosure*

As mentioned above, the following persons and entities generally are prohibited from giving a gift worth more than \$100 to a reporting individual (a person required to file FORM 1 or FORM 6) or to a state procurement employee; a political committee; a lobbyist who lobbies the reporting individual's or procurement employee's agency, and the partner, firm, employer, or principal of such a lobbyist; and vendors. If such person or entity makes a gift worth between \$25 and \$100 to a reporting individual or state procurement employee (that is not accepted in behalf of a governmental entity or charitable organization), the gift should be reported on FORM 30. The donor also must notify the recipient at the time the gift is made that it will be reported.

The FORM 30 should be filed by the last day of the calendar quarter following the calendar quarter in which the gift was made. If the gift was made to an individual in the legislative branch, FORM 30 should be filed with the Lobbyist Registrar. If the gift was to any other reporting individual or state procurement employee, FORM 30 should be filed with the Commission on Ethics.

However, notwithstanding Section 112.3148, Fla. Stat., no executive branch lobbyist or principal shall make, directly or indirectly, and no executive branch agency official or employee who files FORM 1 or FORM 6 shall knowingly accept, directly or indirectly, **any expenditure** made for the purpose of lobbying. This may include gifts that formerly were permitted under Section 112.3148. [Sec. 112.3215, Fla. Stat.] Similar

prohibitions apply to legislative officials and employees. However, these laws are not administered by the Commission on Ethics. [Sec. 11.045, Fla. Stat.] In addition, gifts from political committees are prohibited. [Sec. 112.31485, Fla. Stat.]

9. *FORM 1X AND FORM 6X - Amendments to Form 1 and Form 6*

These forms are provided for officers or employees who want to amend their previously filed Form 1 or Form 6.

#### IV. AVAILABILITY OF FORMS

LOCAL OFFICERS and EMPLOYEES who must file FORM 1 annually will be sent the form by mail from the Supervisor of Elections in the county in which they permanently reside not later than JUNE 1 of each year. Newly elected and appointed officials or employees should contact the heads of their agencies for copies of the form or download it from [www.ethics.state.fl.us](http://www.ethics.state.fl.us), as should those persons who are required to file their final disclosure statements within 60 days of leaving office or employment.

ELECTED CONSTITUTIONAL OFFICERS, OTHER STATE OFFICERS, and SPECIFIED STATE EMPLOYEES who must file annually FORM 1 or 6 will be sent these forms by mail from the Commission on Ethics by JUNE 1 of each year. Newly elected and appointed officers and employees should contact the heads of their agencies or the Commission on Ethics for copies of the form or download it from [www.ethics.state.fl.us](http://www.ethics.state.fl.us), as should those persons who are required to file their final disclosure statements within 60 days of leaving office or employment.

Any person needing one or more of the other forms described here may also obtain them from a Supervisor of Elections or from the Commission on Ethics, P.O. Drawer 15709, Tallahassee, Florida 32317-5709. They are also available on the Commission's website: [www.ethics.state.fl.us](http://www.ethics.state.fl.us).

#### V. PENALTIES

A. *Non-criminal Penalties for Violation of the ~~Sunshine Amendment and the~~ Code of Ethics*

There are no criminal penalties for violation of the ~~Sunshine Amendment and the~~ Code of Ethics. Penalties for violation of these laws may include: impeachment, removal from office or employment, suspension, public censure, reprimand, demotion, reduction in salary level, forfeiture of no more than one-third salary per month for no more than twelve months, a civil penalty not to exceed \$10,000, and restitution of any pecuniary benefits received, and triple the value of a gift from a political committee.

B. *Penalties for Candidates*

CANDIDATES for public office who are found in violation of the Sunshine Amendment or the Code of Ethics may be subject to one or more of the following penalties: disqualification from being on the ballot, public censure, reprimand, or a civil penalty not to exceed \$10,000, and triple the value of a gift received from a political committee.

### *C. Penalties for Former Officers and Employees*

FORMER PUBLIC OFFICERS or EMPLOYEES who are found in violation of a provision applicable to former officers or employees or whose violation occurred prior to such officer's or employee's leaving public office or employment may be subject to one or more of the following penalties: public censure and reprimand, a civil penalty not to exceed \$10,000, and restitution of any pecuniary benefits received, and triple the value of a gift received from a political committee.

### *D. Penalties for Lobbyists and Others*

An executive branch lobbyist who has failed to comply with the Executive Branch Lobbying Registration law (see Part VIII) may be fined up to \$5,000, reprimanded, censured, or prohibited from lobbying executive branch agencies for up to two years. Lobbyists, their employers, principals, partners, and firms, and political committees and committees of continuous existence who give a prohibited gift or honorarium or fail to comply with the gift reporting requirements for gifts worth between \$25 and \$100, may be penalized by a fine of not more than \$5,000 and a prohibition on lobbying, or employing a lobbyist to lobby, before the agency of the public officer or employee to whom the gift was given for up to two years. Any agent or person acting on behalf of a political committee giving a prohibited gift is personally liable for a civil penalty of up to triple the value of the gift.

Executive Branch lobbying firms that fail to timely file their quarterly compensation reports may be fined \$50 per day per principal for each day the report is late, up to a maximum fine of \$5,000 per report.

### *E. Felony Convictions: Forfeiture of Retirement Benefits*

Public officers and employees are subject to forfeiture of all rights and benefits under the retirement system to which they belong if convicted of certain offenses. The offenses include embezzlement or theft of public funds; bribery; felonies specified in Chapter 838, Florida Statutes; impeachable offenses; and felonies committed with intent to defraud the public or their public agency. [Sec. 112.3173, Fla. Stat.]

### *F. Automatic Penalties for Failure to File Annual Disclosure*

Public officers and employees required to file either Form 1 or Form 6 annual financial disclosure are subject to automatic fines of \$25 for each day late the form is filed after September 1, up to a maximum penalty of \$1,500. [Sec. 112.3144 and 112.3145, Fla. Stat.]

## **VI. ADVISORY OPINIONS**

Conflicts of interest may be avoided by greater awareness of the ethics laws on the part of public officials and employees through advisory assistance from the Commission on Ethics.

### *A. Who Can Request an Opinion*

Any public officer, candidate for public office, or public employee in Florida who is in doubt about the applicability of the standards of conduct or disclosure laws to himself or herself, or anyone who has the power to hire or terminate another public employee, may seek an advisory opinion from the Commission about himself or herself or that employee.

### *B. How to Request an Opinion*

Opinions may be requested by letter presenting a question based on a real situation and including a detailed description of the situation. Opinions are issued by the Commission and are binding on the conduct of the person who is the subject of the opinion, unless material facts were omitted or misstated in the request for the opinion. Published opinions will not bear the name of the persons involved unless they consent to the use of their names; however, the request and all information pertaining to it is a public record, made available to the Commission and to members of the public in advance of the Commission's consideration of the question.

### *C. How to Obtain Published Opinions*

All of the Commission's opinions are available for viewing or download at its website: [www.ethics.state.fl.us](http://www.ethics.state.fl.us).

## **VII. COMPLAINTS**

### *A. Citizen Involvement*

The Commission on Ethics cannot conduct investigations of alleged violations of the Sunshine Amendment or the Code of Ethics unless a person files a sworn complaint with the Commission alleging such violation has occurred, or a referral is received, as discussed below.

If you have knowledge that a person in government has violated the standards of conduct or disclosure laws described above, you may report these violations to the Commission by filing a sworn complaint on the form prescribed by the Commission and available for download at [www.ethics.state.fl.us](http://www.ethics.state.fl.us). The Commission is unable to take action based on learning of such misdeeds through newspaper reports, telephone calls, or letters.

You can obtain a complaint form (FORM 50), by contacting the Commission office at the address or phone number shown on the inside front cover of this booklet, or you can download it from the Commission's website: [www.ethics.state.fl.us](http://www.ethics.state.fl.us).

### *B. Referrals*

The Commission may accept referrals from: the Governor, the Florida Department of Law Enforcement, a State Attorney, or a U.S. Attorney. A vote of six of the Commission's nine members is required to proceed on such a referral.

### *C. Confidentiality*

The complaint or referral, as well as all proceedings and records relating thereto, is confidential until the accused requests that such records be made public or until the matter reaches a stage in the Commission's proceedings where it becomes public. This means that unless the Commission receives a written waiver of confidentiality from the accused, the Commission is not free to release any documents or to comment on a complaint or referral to members of the public or press, so long as the complaint or referral remains in a confidential stage.

A COMPLAINT OR REFERRAL MAY NOT BE FILED WITH RESPECT TO A CANDIDATE ON THE DAY OF THE ELECTION, OR WITHIN THE 30 CALENDAR DAYS PRECEDING THE ELECTION DATE, UNLESS IT IS BASED ON PERSONAL INFORMATION OR INFORMATION OTHER THAN HEARSAY.

*D. How the Complaint Process Works*

Complaints which allege a matter within the Commission's jurisdiction are assigned a tracking number and Commission staff forwards a copy of the original sworn complaint to the accused within five working days of its receipt. Any subsequent sworn amendments to the complaint also are transmitted within five working days of their receipt.

Once a complaint is filed, it goes through three procedural stages under the Commission's rules. The first stage is a determination of whether the allegations of the complaint are legally sufficient: that is, whether they indicate a possible violation of any law over which the Commission has jurisdiction. If the complaint is found not to be legally sufficient, the Commission will order that the complaint be dismissed without investigation, and all records relating to the complaint will become public at that time.

In cases of very minor financial disclosure violations, the official will be allowed an opportunity to correct or amend his or her disclosure form. Otherwise, if the complaint is found to be legally sufficient, a preliminary investigation will be undertaken by the investigative staff of the Commission. The second stage of the Commission's proceedings involves this preliminary investigation and a decision by the Commission as to whether there is probable cause to believe that there has been a violation of any of the ethics laws. If the Commission finds no probable cause to believe there has been a violation of the ethics laws, the complaint will be dismissed and will become a matter of public record. If the Commission finds probable cause to believe there has been a violation of the ethics laws, the complaint becomes public and usually enters the third stage of proceedings. This stage requires the Commission to decide whether the law was actually violated and, if so, whether a penalty should be recommended. At this stage, the accused has the right to request a public hearing (trial) at which evidence is presented or the Commission may order that such a hearing be held. Public hearings usually are held in or near the area where the alleged violation occurred.

When the Commission concludes that a violation has been committed, it issues a public report of its findings and may recommend one or more penalties to the appropriate disciplinary body or official.

When the Commission determines that a person has filed a complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations, the complainant will be liable for costs plus reasonable attorney's fees incurred by the person complained against. The Department of Legal Affairs may bring a civil action to recover such fees and costs, if they are not paid voluntarily within 30 days.

*E. Dismissal of Complaints At Any Stage of Disposition*

The Commission may, at its discretion, dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, in which case the Commission will issue a public report stating with particularity its reasons for the dismissal. [Sec. 112.324(11), Fla. Stat.]

#### ***F. Statute of Limitations***

All sworn complaints alleging a violation of the Sunshine Amendment or the Code of Ethics must be filed with the Commission within five years of the alleged violation or other breach of the public trust. Time starts to run on the day AFTER the violation or breach of public trust is committed. The statute of limitations is tolled on

the day a sworn complaint is filed with the Commission. If a complaint is filed and the statute of limitations has run, the complaint will be dismissed. [Sec. 112.3231, Fla. Stat.]

### **VIII. EXECUTIVE BRANCH LOBBYING**

Any person who, for compensation and on behalf of another, lobbies an agency of the executive branch of state government with respect to a decision in the area of policy or procurement may be required to register as an executive branch lobbyist. Registration is required before lobbying an agency and is renewable annually. In addition, each lobbying firm must file a compensation report with the Commission for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal. As noted above, no executive branch lobbyist or principal can make, directly or indirectly, and no executive branch agency official or employee who files FORM 1 or FORM 6 can knowingly accept, directly or indirectly, any expenditure made for the purpose of lobbying. [Sec. 112.3215, Fla. Stat.]

Paying an executive branch lobbyist a contingency fee based upon the outcome of any specific executive branch action, and receiving such a fee, is prohibited. A violation of this prohibition is a first degree misdemeanor, and the amount received is subject to forfeiture. This does not prohibit sales people from receiving a commission. [Sec. 112.3217, Fla. Stat.]

Executive branch departments, state universities, community colleges, and water management districts are prohibited from using public funds to retain an executive branch (or legislative branch) lobbyist, although these agencies may use full-time employees as lobbyists. [Sec. 11.062, Fla. Stat.]

Additional information about the executive branch lobbyist registration system may be obtained by contacting the Lobbyist Registrar at the following address:

Executive Branch Lobbyist Registration  
Room G-68, Claude Pepper Building  
111 W. Madison Street  
Tallahassee, FL 32399-1425  
Phone: 850/922-4987

### **IX. WHISTLE-BLOWER'S ACT**

In 1986, the Legislature enacted a "Whistle-blower's Act" to protect employees of agencies and government contractors from adverse personnel actions in retaliation for disclosing information in a sworn complaint alleging certain types of improper activities. Since then, the Legislature has revised this law to afford greater protection to these employees.

While this language is contained within the Code of Ethics, the Commission has no jurisdiction or authority to proceed against persons who violate this Act. Therefore, a person who has disclosed

information alleging improper conduct governed by this law and who may suffer adverse consequences as a result should contact one or more of the following: the Office of the Chief Inspector General in the Executive Office of the Governor; the Department of Legal Affairs; the Florida Commission on Human Relations; or a private attorney. [Sec. 112.3187 - 112.31895, Fla. Stat.]

#### **X. ADDITIONAL INFORMATION**

As mentioned above, we suggest that you review the language used in each law for a more detailed understanding of Florida's ethics laws. The "Sunshine Amendment" is Article II, Section 8, of the Florida Constitution. The Code of Ethics for Public Officers and Employees is contained in Part III of Chapter 112, Florida Statutes.

Additional information about the Commission's functions and interpretations of these laws may be found in Chapter 34 of the Florida Administrative Code, where the Commission's rules are published, and in **The Florida Administrative Law Reports**, which until 2005 published many of the Commission's final orders. The Commission's rules, orders, and opinions also are available at [www.ethics.state.fl.us](http://www.ethics.state.fl.us).

If you are a public officer or employee concerned about your obligations under these laws, the staff of the Commission will be happy to respond to oral and written inquiries by providing information about the law, the Commission's interpretations of the law, and the Commission's procedures.

#### **XI. TRAINING**

Constitutional officers are required to receive a total of four hours training, per calendar year, in the area of ethics, public records, and open meetings. The Commission on Ethics does not track compliance or certify providers.

Through a project funded by the Florida Legislature, online training addressing Florida's Code of Ethics, Sunshine Law, and Public Records Act is available. See [www.iog.learnsomething.com](http://www.iog.learnsomething.com) for current fees. Bulk purchase arrangements, including state and local government purchase orders, are available. For more information, visit [www.ethics.state.fl.us](http://www.ethics.state.fl.us).

