

# THE SUNSHINE LAW THE PUBLIC RECORDS LAW CODE OF ETHICS

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# THE SUNSHINE LAW (AN OVERVIEW)

Article I, Section 24 (Florida Constitution)  
Section 286.011, Florida Statutes



# The Florida Constitution

## *Article I, Section 24*

All meetings of any collegial public body of the executive branch of state government or 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 and meetings of the legislature shall be open and noticed...



# Government-in-the-Sunshine

## Chapter 286.011(1), Florida Statutes

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.

## Requirement of Ch. 286.011(1), F.S.

- (1) Meetings of public boards or commissions must be open to the public;
- (2) Reasonable notice of such meetings must be given; and
- (3) Minutes of the meetings must be taken.

# Purpose

The purpose of the Sunshine Law is to ensure that decisions by public bodies are made in an open forum accessible to members of the public.

“Decisions” are official action which may include, but are not limited to:

- \* Recommendations
- \* Discussions
- \* Deliberations



# Who is Subject to the Sunshine Law?

- ▣ Any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or political subdivision. (i.e. collegial bodies)
- ▣ Applies equally to elected or appointed boards or commissions.
- ▣ Advisory Boards.

# Who Is Not Subject to the Sunshine Law?

- ▣ The Judiciary and the Legislature.
- ▣ Fact-finding Committees (strictly for the purpose of information gathering and reporting). Does not apply to final decision makers.
- ▣ Private Organizations



# What is a “Meeting” Subject to the Sunshine Law

- ▣ Any gathering, formal or informal, of two or more members of the same collegial body to discuss some matter on which it is foreseeable that action will be taken by the body at some future point.
- ▣ Discussions and deliberations, as well as formal action taken by a collegial body. (Interactive communication)
- ▣ No requirement that a quorum be present

# Written Correspondence and Email

- ▣ One-way communication is okay (i.e. A member of a collegial body may send written or electronic correspondence to his/her fellow board members pertaining to an item that they may consider at a future date, however the other members may not offer a response).
- ▣ Interaction among board members = violation
- ▣ DO NOT USE “REPLY ALL”



# Use of Nonmembers as Liaisons between Board Members

- ▣ Third parties who are not members of a collegial body may not be used to exchange information between members of the body if such an exchange would otherwise be subject to the Sunshine Law.

# Candidates and Members-Elect

- ▣ Members-elect of boards or commissions are subject to the Sunshine Law.
- ▣ The Sunshine Law does not apply to candidates unless the candidate is an incumbent seeking reelection.



# Violations of the Sunshine Law

- ❑ Any member of a collegial body who violates the Sunshine Law is guilty of a noncriminal infraction, punishable by fine not exceeding \$500. Section 286.011(3)(a), F.S
- ❑ Any member of a collegial body who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree. Section 286.011(3)(b), F.S.
- ❑ Criminal penalties apply to members of advisory boards as well as members of elected or appointed boards. AGO 01-85 (2001)

# ADDITIONAL NON-CRIMINAL PENALTIES

▣ Suspension or Removal from Office. The governor may:

1) Suspend any public official who has been charged with a misdemeanor arising out of his or her official duties; and

2) Remove any public official who is convicted of a misdemeanor arising out of his or her official duties.

# The W.D. Childers Incident (2003)

- ❑ Escambia County Commission Chairman; Former State Senate President
- ❑ Wanton and Knowing violation of the Sunshine Law
- ❑ 60-day jail sentence (served 38 days) – First public official incarcerated for violation of the Sunshine Law
- ❑ \$500 fine plus \$3,600 court costs



# THE FLORIDA PUBLIC RECORDS LAW

Chapter 119, F.S.





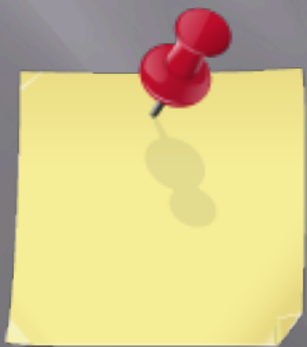
# Public Records

## Section 119.011(11), F.S.

- ▣ "Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

# Notes or Non-Final Drafts

- No “unfinished business” exception to the public inspection and copying requirements of Chapter 119, F.S. If the purpose of a document prepared in connection with the official business of a public agency is to perpetuate, communicate or formalize knowledge, then it is a public record regardless of whether it is in final form.



# What Agencies are Subject to the Public Records Law?

- ▣ “Any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Services Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation or business entity acting on behalf of any public agency.” Section 119.011(2), F.S.

# Computer Records and Email

- ❑ Information stored in a public agency's computer "is as much a public record as a written page in a book or tabulation in a file stored in a filing cabinet."
- ❑ Email messages made or received by agency employees in connection with official business are public records and subject to disclosure in the absence of a statutory exemption from public inspection.
- ❑ **EXCEPTION** - Private emails stored in government computers do not automatically become a public record simply by virtue of that storage.

# Transitory Messages

- ▣ Transitory messages are messages of short-term value based upon the content or purpose of the message, *not* the format used to transmit it (i.e. reminders, event notices, etc...).
- ▣ Transitory messages are not intended to formalize or perpetuate knowledge, do not set policy, establish guidelines, confirm a transaction or act as a receipt.
- ▣ Retain until obsolete, superseded or administrative value is lost.

# Who Responds to Public Records Requests?

- ▣ “Custodian of public records” mean “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.” (i.e. Board Secretary) Section 119.011(5), F.S.



# Who is Authorized to Inspect Public Records?

- ▣ ANYONE! Section 119.01, F.S.
- ▣ No “legitimate need” or “special purpose” requirement.



# When Must an Agency Respond to a Public Records Request?

- ▣ Custodian of records must promptly acknowledge request and respond in good faith.
- ▣ No statutory time to respond, but custodian must make reasonable efforts to do so.



# Exemptions

- ▣ See Section 119.071, F.S.
- ▣ The Public Records Law is liberally construed in favor of open government
- ▣ Exemptions = Narrowly construed
- ▣ Burden is on the agency to illustrate why a record falls within the statutory exemption

# CODE OF ETHICS FOR PUBLIC OFFICERS AND EMPLOYEES

Part III, Chapter 112, F.S.



# An Overview

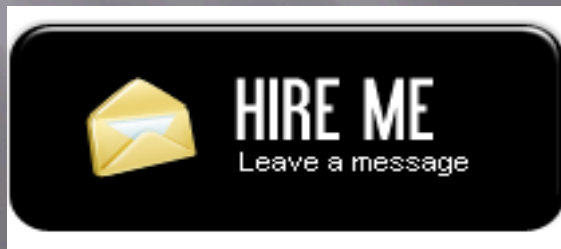
- ▣ Sec. 112.313 – Standards of Conduct for Public Officers and Employees
- ▣ Sec. 112.3135 – Restriction on Employment of Relatives
- ▣ Sec. 112.3143 – Voting Conflicts
- ▣ Sec. 112.3148 – Gifts

# Standards of Conduct for Public Officers and Employees

- ▣ Solicitation of Acceptance of Gifts
- ▣ Doing Business with One's agency
- ▣ Unauthorized Compensation
- ▣ Misuse of Public Position
- ▣ Conflicting Employment or Contractual Relationship

# Restriction on Employment of Relatives

A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official.



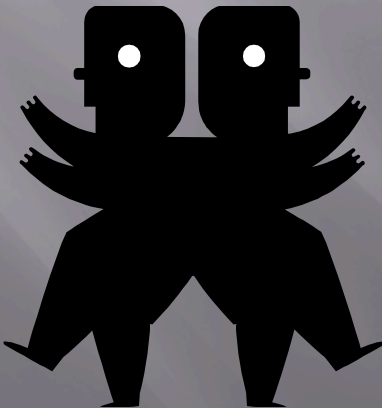
# Who is a Relative?

An individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

\* DEFINITION OF “RELATIVE” IS DIFFERENT FOR THE REST OF CH. 112, F.S.

# Form 8b – Voting Conflict Disclosure

- ▣ Where to file: Board Secretary
- ▣ When to file: Within 15 days after the vote occurs



# Voting Conflicts

A public official must abstain from voting on a measure which would inure to the special gain or loss of:

- 1) the official;
- 2) a business associate;
- 3) a relative;
- 4) a person who has retained the official; or
- 5) the parent subsidiary, or sibling organization or subsidiary of a principal which has retained the official.



# Form 9 – Quarterly Gift Disclosure

- ▣ Where to file: Commission on Ethics
- ▣ When to file: Quarterly
- ▣ What to Disclose: Gifts in excess of \$100

# Examples of Gifts

- 1) Real property or the use of real property
- 2) Tangible or intangible personal property (or use thereof)
- 3) Preferential rates on debts, loans, goods, services
- 4) Forgiveness of indebtedness
- 5) Food or beverage
- 6) Membership dues
- 7) Entrance fees, admission fees, and tickets to events
- 8) Plants and flowers

# What IS NOT a “Gift”?

- 1) Salary or benefits associated with employment
- 2) Awards in recognition of public or civic service
- 3) Use of a public facility for a public purpose
- 4) Honorary membership in a service organization
- 5) Transportation provided for official business



# What Gifts are Exempt from Disclosure?

## Gifts from relatives

“Relatives” includes “a person who is engaged to be married to you or who otherwise holds himself or herself out as or is generally known as the person whom you intend to marry or with whom you intend to form a household or any other person having the same legal residence as you.”

# How to Value a Gift?

- Actual cost to donor
- Do NOT include taxes or gratuities
- Official has 90 days to provide compensation for the gift, which will be deducted from the value
- Pro-rate

# How to Value a Gift? - Continued

Transportation – based on a roundtrip basis unless only one way is provided. Transportation in private conveyance given same value as comparable commercial conveyance.

Lodging – consecutive days are considered one gift. Lodging in private residence valued at \$44 per night.

Entrance/Admission fees – face value of ticket or per event basis, whichever is greater. If donor is a *charitable organization*, value does not include portion of cost that represents a contribution to that charity.



# THE END

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