SUNSHINE LAW
SESSION I

GOVERNMENT IN THE SUNSHINE LAW
By: Ronald Combs, Senior Assistant City Attorney
June 2005

I. INTRODUCTION

WHAT IS THE GOVERNMENT IN THE SUNSHINE LAW?

The Government in the Sunshine Law, which is commonly referred to as the Sunshine Law, provides a right of access to governmental meetings at both the state and local levels. At the heart of the law is maintaining faith of the public in government through open meetings, allowing for public input in governmental decisions and keeping a check on governmental abuse.

Specifically, the law (Section 286.011 Fla. Stat.) requires that:

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipality corporation, or political subdivision ...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.

(2) The minutes of a meeting or any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection.

There are three basic requirements of the Sunshine Law:

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 meeting must be taken.
II. WHAT AGENCIES ARE COVERED BY THE SUNSHINE LAW?

The Sunshine Law applies to "any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or political subdivision.

It applies to public collegial bodies within the state at both the local as well as state level.

It applies equally to elected or appointed boards or commissions.

III. WHAT QUALIFIES AS A MEETING?

The Sunshine Law applies to all discussions or deliberations as well as the formal action taken by a board or commission.

The Sunshine Law 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.

Despite the "two or more members", a single individual can trigger applicability of the Sunshine Law. When an individual has been delegated the authority to act for the board or commission, then any action he/she takes which would have been subject to the Sunshine Law if done by the board or commission is still subject to the law.

There is not a requirement that a quorum be present for a meeting to be covered under the law. The fact that a meeting cannot be conducted for lack of a quorum will not insulate board members if discussions are held out of the sunshine.
IV. WHO ARE PUBLIC OFFICERS?

A public officer may be an "agency" for purposes of creating a board or committee that is subject to the Sunshine Law. In *Krause v. Reno*, 366 So.2d 1244 (Fla 3d DCA 1979), the court held that a city manager was an "agency" for the purposes of the Sunshine Law. Therefore, when the city manager appointed an advisory group of citizens to assist him in screening applications and making recommendations for the position of chief of police, the city manager created a "board" that was subject to the Sunshine Law. Similarly, in *Silver Express Company v. Miami-Dade Community College*, 691 So.2d 1099 (3d DCA 1997), the court held that a committee appointed by the College's purchasing director to consider proposals to provide flight services was subject to the Sunshine Law. In this case, the committee consisted of college staff and one private person who advised and assisted the purchasing director in evaluating and ranking the proposals.

A single elected official, such as a mayor, who creates a committee or group to assist in reorganizing the city government or seeking advice on pending legislation can create a committee or group that is subject to the Sunshine Law. See AGO 85-76 wherein Attorney General Jim Smith, opined that "a community standards committee which is appointed by the mayor to assist him in formulating his policies and recommendations and which gives advice and makes recommendations to the mayor concerning legislative enactment standards is subject to the Government in the Sunshine Law."

V. ADVISORY BOARDS

An advisory board, whether created by law, ordinance or otherwise; appointed by a single public official or a collegial body and, whose purposes are limited to making recommendations and which possess no authority to bind government are subject to the Sunshine Law. For example, the Sunshine Law has been held applicable to an
VI. FACT-FINDING COMMITTEES

A committee set up for and conducting only fact-finding activities, i.e., strictly information gathering and reporting with no decision-making authority, is not subject to the Sunshine Law.

If any decision-making function is coupled with the fact-finding activities, any such meeting is subject to the Sunshine Law.

VII. PRIVATE ORGANIZATIONS

In general, a private corporation that performs services for a public agency and receives compensation for such services pursuant to a contract or otherwise is not, by virtue of this relationship alone, subject to the Sunshine Law.

The Florida Supreme Court has held that airlines that use airport facilities are not public representatives of an airport authority.

The Sunshine Law has been held not to be applicable to a nongovernmental organization when the organization counsels and advises private business concerns on their participation in a federal loan program made available by the city.

However, if a private agency acts on behalf or a governmental entity in the performance of its public duties it may be subject to open meeting requirements.

A not-for-profit corporation created by a city redevelopment agency to assist in the implementation of the agency's redevelopment plan has been held subject to the Sunshine Law as has a nonprofit organization designated by a county to fulfill the role of its dissolved cultural affairs council.
VIII. STAFF MEETINGS

The meetings of the staff of boards or commissions covered by the Sunshine Law are not generally subject to that law.

In Cape Publications v. City of Palm Bay, 473 So.2d 222 (Fla. 5th DCA 1985) the court held that a purely “fact-finding” group which helps a city manager during an interview process is not subject to the Sunshine Law. The group did not screen applicants or make recommendations, similarly, in City of Sunrise v. News and Sun-Sentinel Co., 542 So.2d 1354 (Fla. 4th DCA 1989), the court held that a meeting between a mayor, who by city charter had the authority of a chief executive officer, and a city employee concerning disciplinary action, was not a meeting under the Sunshine Law. A committee composed of staff which is merely responsible for informing the decision-maker through fact-finding consultations, is not subject to the Sunshine Law.

However, in Dascott v. Palm Beach County, 877 So.2d 8 (Fla. 4th DCA 2004), a pre-termination panel constituted a “board” or “commission” because it exercised decision-making authority. In Dascott the County Administrator had the sole authority to discipline or terminate county employees. He delegated that authority to each department head. The department head in charge of appellant’s pre-termination conference chose to share this authority with the other members of the panel. As the panel exercised a decision-making function, a “board” or “commission” within the meaning of the Sunshine Law was formed and the deliberations should have been conducted in the sunshine.

When a staff member ceases to function in a staff capacity and is appointed to a committee which is delegated authority to make recommendations to a board or official, the Sunshine Law applies to that committee.
IX. SUB-COMMITTEES

Subcommittees are set up as a part of the decision-making process to the board, so the provisions of The Sunshine Law are applicable.

X. MEMBERS OF DIFFERENT BOARDS

The Sunshine Law does not apply to a meeting between individuals who are members of different boards or authorities unless one or more of the individuals has been delegated the authority to act on behalf of the board or commission.

XII. SOCIAL EVENTS

Members of a public board or commission are not prohibited under the Sunshine Law from meeting together socially, provided that matters that may come before the commission, board or authority are not discussed at such gatherings. Thus, there is no per se violation of the Sunshine Law for a husband and wife to serve on the same public board or authority so long as they do not discuss board or commission business without complying with the requirements of the Sunshine Law.

When two or more members of a board or authority are attending or participating in meetings or other functions unconnected with their board, they must refrain from discussing matters on which foreseeable action may be taken by their board but are not otherwise restricted in their actions.

XII. NOTICE AND PROCEDURAL REQUIREMENTS OF THE SUNSHINE LAW

A. Notice Of Meetings

Generally speaking, reasonable notice of public meetings is required. Although the Sunshine Law does not specify any specific notice requirements, the courts have stated that, as a practical matter, in order for a public meeting to be in essence “public”, reasonable notice of
the meeting must be given. The type of notice that must be given is variable, however, depending on the facts of the situation and the board involved. A board or commission must give notice at such time and in such a manner as will enable interested members of the public to attend the meeting. Three days notice has been held to constitute reasonable notice.

Notice requirements may be provided by statute, ordinance or by-laws.

If no notice or defective notice of a meeting is given, a potential violation of the law exists. Yarborough v. Young, 462 So.2d 515 (Fla 1st DCA 1985).

The Attorney General’s Office suggests the following notice guidelines:

1. The notice should contain the time and place of the meeting, and if available, an agenda (if no agenda is available, subject matter summations may be used);
2. The notice should be prominently displayed in the area of the agency’s offices set aside for that purpose;
3. Emergency sessions should be afforded the most appropriate and effective notice under the circumstances and special meetings should have at least 24 hours notice to the public.
4. The use of news releases and/or phone calls to the media is highly effective.

B. Places To Meet

While the Sunshine Law does not specify the place where a meeting of a board or authority must be held, it does prohibit boards or authorities from holding meetings at any facility which discriminates on the basis of sex, age, race, creed, color, origin, or economic status, or which operates in such a manner as to unreasonably restrict public access to such a facility. All facilities where public meetings are held should be accessible to the handicapped.
C. Minutes

The minutes of public meetings must be taken. The minutes need not be verbatim transcripts of the meetings; rather the use of the term "minutes" contemplates a brief summary or series of brief notes or memoranda reflecting the events of the meeting.

There is no requirement that voice recordings be made by the board or commission at each public meeting. If voice recordings are used, then these tapes become public records.

The minutes required to be kept for "workshop" meetings are no different than those required for any other meeting of a board or commission.

XIII. PUBLIC’S RIGHT TO ATTEND A PUBLIC MEETING

The courts have recognized the public’s right to attend and participate in a public meeting. A board’s request that members of the public voluntarily leave the room may violate the Sunshine Law.

Staff are members of the public as well as employees and cannot be excluded from public meetings. However, personnel policies may require staff to take annual leave when attending public meetings as individuals.

The courts have not definitively addressed the extent to which a citizen may be allowed to speak at a public meeting. In *Douglas M. Jones v. Richard A Heyman*, 888 F.2d 1328 (11th Cir. 1989), the court held that the chair of a meeting has the duty to conduct an orderly meeting. A person who obstructs the orderly conduct of a public meeting may be removed from the meeting after notice and warning.
XIV. CAN A PUBLIC AGENCY HOLD A CLOSED MEETING?

There are a limited number of exemptions that would allow a public agency to close a meeting.

1. Settlement negotiations or strategy sessions related to litigation expenditures. The city commission may meet in private with the city attorney to discuss pending litigation under certain conditions. Prior to holding the sessions, the city attorney must notify the commission in a public meeting of the desire to hold the private session, which must be confined in subject matter to the litigation. A transcript of the meeting must be made and will become public record once the litigation is concluded.

2. Meetings relating solely to the evaluation of claims or offers of compromise of claims, filed with the risk manager, are exempt from the Sunshine law. The minutes of these meetings are exempt from disclosure until the termination of the litigation.

3. Collective bargaining sessions. The city manager, or designee, and the city commission may meet in private to discuss actual and impending collective bargaining.

4. Those portions of any meeting which would reveal a security system plan or portion thereof are made confidential and exempt by § 119.071(1) are exempt from § 286.011 and § 24(b), Art. 1 of the State Constitution.

XV. PRACTICAL APPLICATION TO RECURRING EVENTS

A. Workshops And Informal Discussions.

The Sunshine Law applies to any gathering, whether formal or casual, of two or more members of the same board or authority to discuss a matter on which foreseeable action will be taken by that board or commission.
B. Written Correspondence Between Members.

The use of a written report by one board member to provide information to other members relating to a subject which will be discussed at a public meeting is not a violation of the Sunshine Law if, prior to the meeting, there is no interaction related to the report among the members. In such case, the report, which is subject to disclosure under the Public Records Law, is not being used as a substitute for action at a public meeting as there is not interaction among the members prior to the meeting.

The report should not be circulated among members for comments, with such comments then provided to other members. This would be seen as an attempt to circumvent the Sunshine Law and would be a violation of that law.

C. Does the Sunshine Law Apply To Members-elect?

Members-elect of public boards or commissions are covered by the Sunshine Law immediately upon their election to public office. Members-elect should not discuss the board's business with other board members except in a publicly held meeting.

XVI. PEnALTIES IMPOSED FOR VIOLATION OF THE SUNSHINE LAW

A. Non-criminal Infractions.

Any public official violating the provisions of the Sunshine Law may be adjudicated guilty of a non-criminal infraction punishable by a fine not exceeding $500. The state attorney may pursue actions on behalf of the state against public officials that result in findings of guilt for a non-criminal infractions. [§ 286.011(3)(a)]

B. Criminal Penalties.

Any person subject to the Sunshine Law, who knowingly violates the Sunshine Law, is guilty of a misdemeanor of the second degree which is punishable by a term of imprisonment not to
exceed 60 days and/or a fine up to $500.  [§ 286.011(3)(b)]

D. Attorney fees.

Reasonable attorney’s fees will be assessed against a board or commission found to have violated the Sunshine Law. Such fees may be assessed against the individual members of the board except in those cases where the board or commission sought, and took the advice of its attorney; in the latter case, such fees may not be assessed against the individual members of the board.

If a member of a board is charged with a violation of the Sunshine Law and is subsequently acquitted, the board or commission is authorized to reimburse that member for any portion of his or her individually incurred reasonable attorney’s fees.

XVII. CONCLUSION

In making a determination as to whether the Sunshine Law is applicable to a specific meeting, one should examine the purpose of the law, who the participants are, and their actions and activities. Once it is determined that the Sunshine Law applies, then reasonable notice must be given. The meeting must be open to the public, held in a location that is accessible to the public and minutes of the meeting must be taken and maintained.
PUBLIC RECORDS LAW
SESSION I
FLORIDA'S PUBLIC RECORDS LAW
By: Charles L. Hauck, Sr. Assistant City Attorney
June 2005

I. INTRODUCTION

Florida's Public Records Law provides the public with access to public records. Specifically, the law, found at sections 119.01 through 119.19, Fla. Stat., provides public access to all public records, except those exempted by the legislature. The purpose of the Public Records Law is to "open public records so that Florida's citizens can directly observe the actions of the government." The right of the public to inspect or copy public records is embodied in the Florida Constitution. Art. 1, Sec. 24, Florida Constitution.

II. PUBLIC RECORDS WHICH ARE OPEN TO INSPECTION

Section 119.011(1) defines public records to include:
All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of 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.

The Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge. Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc., 379 So.2d 633 (Fla. 1980). All such materials, regardless of whether they are in final form, are open for public inspection unless the legislature has exempted them from disclosure. Wait v. Fla. Power & Light Co., 372 So.2d 420, 425 (Fla. 1979). Some documents are not "records," in that they are not intended to pass on or finalize knowledge. Thus,

1 "Record" relates to the character of the document.
2 "Public" focuses on the connection with official business.
drafts, outlines, or notes to oneself, which are guides intended to aid individuals if and when a “final”
document is prepared, are not public records. Johnson
v. Butterworth, 713 So.2d 985 (Fla. 1998). Letters or
computer e-mails to and from family members or private
business associates are not “public” records, even if,
for example, they are stored in a “public” desk or
computer. State v. City of Clearwater, 863 So.2d 149
(Fla. 2003). Some public “records” are of such
transitory, fleeting nature, such as an e-mail stating,
“Let’s meet now to discuss termination of the Jones
contract,” that they need not be retained past the
point at which they become obsolete, which can be
virtually as soon as they are generated. On the other
hand, non-transitory “public” “records” on an
official’s home computer are public records, so caution
should be exercised when using private computers for
public business.

If the purpose of the 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. Shevin, 379 So.2d at 640. If an agency
document is circulated for review, comment, or
information to another agency or department, it is a
public record which must be available for inspection.
This is true even though the document might be marked
“draft”, or might not be an official expression of
policy. Thus “draft” minutes, not yet approved,
become public records when circulated for review among
board members prior to a meeting at which their
approval will be considered.

The term “agency document” should not be confused with
individuals who are preparing a document for the
agency. For example, if the police chief asks a
subordinate to prepare a report or memorandum that
will be authored by the chief, the report or
memorandum is not a public record until the chief
completes the document. On the other hand, a
subordinate who prepares a document that is intended
to communicate information to the chief has produced a
public record.

The term “public record” is not limited to traditional
written documents. As the statutory definition states,
tapes, photographs, computer files, films, sound
recordings or other material constitute public records.
Thus, as technology changes the means by which agencies
communicate, manage and store information, the
definition of public record will also change. For
example, electronic mail ("e-mail") and computer stored
information has been found to constitute public record.

The following is a partial list of materials which have
been found to constitute public records:

1. Budget worksheets utilized by a school board;

2. County records of payments made by individuals for
   waste collection services;

3. Salary records of Assistant State Attorneys;

4. Tape recordings of incoming calls to a public
   agency;

5. Telephone call records of calls made from agency
   telephones;

6. Videotapes and training films prepared by State
   Attorney's Office.

III. WHO IS SUBJECT TO THE PUBLIC RECORDS LAW?

Application of the Public Records Law is not restricted
to elected government officials and government
employees. "Agencies" that are subject to the Public
Records Law include advisory committees and even
private entities acting on behalf of a public body.
The fact that records generated by such agencies are
not maintained or located in public buildings does not
make these records non-public. Thus, records which
otherwise meet the definition of "Public Records"
remain so even when maintained in a private company's
offices or in the home of an advisory board member.
Whether a private entity's records are considered
public is determined by applying a balancing test.
See, for example, Dade Aviation Consultants v. Knight
Ridder, Inc., 800 So.2d 302 (Fla. 3rd DCA 2001), where
a business consortium's records were determined to be
public records.

The constitutional guarantee of access to public
records extends to the legislative, executive and
judicial branches of government. However, the Public
Records Law contained in Chapter 119, Florida Statutes,
applies only to executive branch agencies, which
includes cities and counties. Chapter 119 does not apply to the legislature or the judiciary.

Section 11.0431, Fla. Stat., establishes public records exemptions for legislative records. The Florida Supreme Court has adopted an administrative rule that establishes public records exemptions for judicial records and sets out procedures for making records requests. Section 28.24, Fla. Stat., rather than Chapter 119, governs copying charges for court records and documents such as deeds, plats and easements that are recorded in the Official Records of each county.

IV. Limitations on Inspection

An agency may not impose a restriction on access to public records if the restriction operates to circumvent a person's right of access. See Wait, 372 So.2d at 425. The agency may, however, impose reasonable conditions upon the inspection such as those that ensure the public records are kept safe and that inspections take place during regular business hours. An individual need not show a special interest in the public records, or even identify himself before being allowed to inspect or copy the records.

The motive of an individual making a public records request is irrelevant. See Curry v. State, 811 So.2d 736 (Fla. 2002), reversing a stalking conviction based in part on over 40 separate public records requests directed at the activities of a particular person.

The fact that materials are of a technical nature and copyrighted will not preclude their inspection by members of the public, including competitors. Neither the desire for, nor the expectation of, non-disclosure will prevent "claimed" trade secrets from being public records; strict compliance with the statutory exemption is needed. Sepro Corp. v. Florida DEP, 839 So.2d 781 (Fla. 1st DCA 2003); Cubic Transp. Systems, Inc. v. Miami-Dade County, 2005 WL 767104 (Fla.App. 3 Dist.).

The nature and volume of the request will dictate, as a matter of reasonableness, the nature of the response. A voluminous request for materials that mixes public, confidential, and private documents may require literally weeks to answer. As noted, infra, much of the cost for responding to such a request may be passed on to the requester. In the case of vague
requests, which purport to desire, for example, "all documents related to X," such will not only likely be overbroad, but will also be too vague for an effective response. A custodian of records is not required to guess which documents are to be produced, and if there is any uncertainty, such should be noted. Only when a particular document is identified with some specificity and directed to a custodian of that record is there an obligation to produce public records responsive to that request. Wootton v. Cook, 590 So.2d 1039 (Fla. 1st DCA 1991). This would generally imply that a document be identified by subject matter, date, author, recipient, etc.

In this regard it is sometimes helpful to get a request for public records in writing. This may lead to a focus by both the requester and recipient on exactly what is being asked for, thus limiting unnecessary efforts and expenses in complying with the request. A written request cannot, however, be required. If a request cannot be reduced to writing, the custodian should at least, for his/her own purposes, record what (s)he understands to be the request, so that if some documents not produced in response to the request are alleged later to have been in fact the subject of the request, evaluation of the actual request, and the actual documents claimed to be responsive, can be made.

The request will also only reach the public records in the custody of the person upon whom the request is made. A request delivered to the Director of the Department of Community Development, requesting items dealing with a particular rezoning, will not trigger an obligation on the part of the City Attorney or the Clerk of the Commission to produce documents in their custody and control, which might relate to those requested from the Director of the Department of Community Development.

V. EXEMPTIONS

The Public Records Act contains numerous exemptions at §119.07, Fla. Stat., and many more throughout the Florida Statutes. Exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. Seminole County v. Wood, 512 So.2d 1000, 1002 (Fla. 5th DCA 1987), rev. denied sub nom. Gillum v. Tribune Co., 503 So.2d 327 (Fla. 1987). In fact, courts have stated that the public policy
favoring open records must be given the broadest possible expression, and that there must be an "overriding public purpose" to maintain secrecy. See Tal-Mason v. Satz, 614 So.2d 1134, 1135 (Fla. 4th DCA 1993); Lorei v. Smith, 464 So.2d at 1332. But see, Doe v. State, 2005 WL 662711 (Fla.App. 4 Dist.).

An agency claiming an exemption from disclosure under the Public Records Act bears the burden of proving the right to an exemption. Florida Freedom Newspapers, Inc. v. Dempsey, 478 So.2d 1128, 1130 (Fla. 1st DCA 1985).

Some records are exempt for a limited amount of time, i.e., "active" criminal investigative information, while some are exempt until destroyed, i.e., the identity of a confidential informant.

The list of exemptions to the Public Records Law is provided in the Florida Statutes and changes annually. Please consult with your public attorney as to specific exemptions.

VI. FEES THAT MAY BE IMPOSED FOR INSPECTING OR COPYING PUBLIC RECORDS

1. Inspection

Public inspection of public records must be available without charge unless otherwise expressly provided by law. State ex rel. Davis v. McMillan, 49 Fla. 243 (1905). The information must be made available for inspection without fee regardless of whether the public record is a written document, a videotape or information stored in a computer. The agency is however only required to provide its records in the format in which they are kept. Seigle v. Barry, 422 So.2d 63 (Fla. 4th DCA 1982).

2. Copying Fees

Although the Public Records Law provides that all records custodians must furnish a copy of public records, a public entity is entitled to charge a fee for copies provided that the amount of the fee does not exceed that established by law or authorized by Chapter 119 of the Florida Statutes. Campbell v. State, 593 So.2d 1148, 1149 (Fla. 1st DCA 1992).
Per law, if the agency does not set a particular fee, the records custodian may require payment of not more than $.15 per one-sided copy for copies that are 8 1/2" by 14" or less. An agency may charge no more than an additional $.05 for each two-sided copy. A charge of up to $1.00 per copy may be assessed for a certified copy of a public record. For other copies, the charge is limited to the actual cost of duplication of the record. Actual cost of duplication is defined in §119.011(1), Fla. Stat., to mean the cost of the materials and supplies used to duplicate the record. "Actual cost" does not include the labor costs and overhead costs associated with such duplication. The statute does provide an exception for copies of county maps or serial photographs supplied by county constitutional officers, which may include a reasonable charge for the labor and overhead associated with the duplication.

Public entities may not charge overhead expenses for things such as utility, personnel or other office expenses in their charges for copies of public records pursuant to a "simple" request. Similarly, a public entity may not charge fees designed to recoup the original costs of developing or producing its records, such as developing the software used to compile data into a particular format.

3. Service Charge

In addition to copying cost, which may be imposed, section 119.07(4) authorizes the imposition of a service charge when the nature or volume of public records to be inspected or copied is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance. In Florida Institutional Legal Services v. Florida Dept. of Corrections, 579 So.2d 267 (Fla. 1st DCA 1991), the Court upheld an agency’s interpretation of "extensive" to mean that it would take more than 15 minutes to locate, review for confidential (and since City of Clearwater presumably non-public) information, copy and re-file the requested material. The charge must be reasonable and must be based on the actual cost
incurred for use of information technology resources, or the labor costs of the personnel providing the service. Information technology resources means data processing hardware and software, supplies, personnel, facility resources, maintenance and training. The term, however, does not include a videotape or a machine to view a videotape. The question of whether an entity may charge for personnel assistance must be made on a case-by-case basis. Public entities may not routinely charge a set service fee.

Indeed, an agency may reasonably require that an appropriate, estimated service fee, or for that matter the projected cost of copying, be paid prior to engaging in the production and/or copying. Thus, for example, if an agency has previously produced and copied records which were never picked up, it may reasonably condition compliance with subsequent requests upon prepayment of chargeable costs.

VII. RETENTION OF PUBLIC RECORDS

Section 119.021(4)(a), Fla. Stat., provides that whoever has custody of public records shall deliver such records to his successor at the expiration of his term of office or, if there is no successor, to the records and information management program of the Division of Library and Information Services of the Department of State. Public records are not the personal property of public officers. Maxwell v. Pine Gas Corp., 195 So.2d 602, 603 (Fla. 4th DCA 1967).

Section 119.021(2)(b), Fla. Stat., requires agencies to establish programs for disposing of records without sufficient legal, fiscal, administrative or archival value pursuant to retention schedules established by the records and information management program of the Division of Library and Information Services at the Department of State. Section 119.021(c), Fla. Stat., provides that, with the exception of certain agency orders that comprise final agency action, records which are no longer needed must be systematically disposed of by public officials, subject to the consent of the records and information management program of the Division of Library and Information Services at the Department of State and in accordance with §257.36, Fla. Stat. Pursuant to §120.53(2.a.),
Fla. Stat., agency orders that comprise final agency action must be indexed and permanently maintained pursuant to applicable procedures of the Department of State. Any specific questions regarding the retention and disposal of public records should be referred to the Clerk, as record-keeper to the Board, your public attorney, or the Division of Library and Information Services at the Department of State.

VIII. PENALTIES FOR REFUSING TO PRODUCE PUBLIC RECORDS FOR INSPECTION OR COPYING

- Civil Action

Any person denied the right of inspection and/or copying under Chapter 119, Fla. Stat., may institute a civil action in circuit court against the public entity which has violated the provisions of Chapter 119, Fla. Stat., in order to compel compliance with that law. Section 119.11(1), Fla. Stat., provides that when such an action is filed, it is entitled to an immediate hearing and takes priority over other pending cases. *Salvador v. Fennelly*, 593 So.2d 1091, 1094 (Fla. 4th DCA 1991).

If the person seeking public records prevails before the trial court, the public agency must comply with the court’s judgment within forty-eight (48) hours unless (1) otherwise provided by the trial court or (2) such determination is stayed within that period by an appellate court. An automatic stay shall exist for forty-eight (48) hours after the filing of the notice of appeal for public records and public meeting cases, which stay may be extended by the trial court on motion. *The Florida Bar re: Rules of Appellate Procedure*, 463 So.2d 1114, 1115 (Fla. 1984).

- Criminal Penalties

Section 119.10(1)(b), Fla. Stat., provides that a public officer who knowingly violates the Public Records Law is subject to suspension and removal or impeachment and is guilty of a misdemeanor of the first degree, punishable by a possible criminal penalty of one (1) year in prison, $1,000.00 fine, or both.
Attorney’s Fees

Section 119.12(1), Fla. Stat., provides that if a civil action is filed against an agency to enforce the provisions of the Public Records Law, and if the court determines that such agency unlawfully refused to permit a public record to be inspected, examined, or copied, the court must assess the reasonable costs of enforcement, including reasonable attorney’s fees, against the agency responsible. See, e.g., Wisner v. City of Tampa Police Dept., 601 So.2d 296, 298 (Fla. 2d DCA 1992). When the agency sued is a public agency, attorney’s fees are recoverable even when access is denied in good faith or under the mistaken belief that the documents are exempt from disclosure. News & Sun-Sentinel Co. v. Palm Beach County, 517 So.2d 743, 743-44 (Fla. 4th DCA 1987), limited by New York Times v. PHH Mental Health Servs., 616 So.2d 27, 29-30 (Fla. 1993); Times Publishing Co. v. City of St. Petersburg, 558 So.2d 487, 495 (Fla. 2d DCA 1990). Attorney’s fees may also be awarded for a successful appeal of a denial of access. Downs v. Austin, 559 So.2d 246, 247-48 (Fla. 1st DCA 1990).

IX. CONCLUSION

The public has a constitutional right to inspect or copy any public record made or received in connection with the official business of state and local governments. Public officials and employees should therefore make available the public records except with respect to those records specifically exempted by law.

This paper is an overview of Florida’s Public Records Law. It is not an exhaustive review, but instead is intended to give the reader a general review of the Public Records Law. Specific questions regarding the Public Records Law should be referred to your public attorney.
Advisory Legal Opinion - AGO 2010-55

Number: AGO 2010-55
Date: December 29, 2010
Subject: Public Records, employee's personal notes

Mr. Isaac D. Turner
City Manager
City of Venice
401 West Venice Avenue
Venice, Florida 34285

RE: PUBLIC RECORDS - PUBLIC EMPLOYEES - NOTES - whether public employee's personal notes are public records. Ch. 119, Fla. Stat.

Dear Mr. Turner:

As the City Manager for the City of Venice, Florida, you have asked for my opinion on substantially the following question:

Are personal notes, taken by a city employee in the course of conducting his official duties and made for the purpose of assisting him in remembering matters discussed, public records subject to public disclosure?

In sum:

Personal notes, taken in the course of conducting official business by a public employee, are not public records subject to the provisions of Chapter 119, Florida Statutes, if the notes have not been transcribed or shown to others and were not intended to perpetuate, communicate, or formalize knowledge.

According to your letter, you serve as the City of Venice's Chief Administrative Officer and are responsible for the management and supervision of all city departments. Earlier this year, you undertook an assessment of the city police department's operations and management. As part of this assessment, you interviewed police department personnel. During and after these interviews, you made handwritten notes for your own personal use to assist you in remembering matters discussed. These notes have not been transcribed or shown to anyone. You assert that your personal notes were not intended to perpetuate, communicate, or
formalize knowledge of any type.[1] You have requested an opinion of the City Attorney on this question and been advised that it is the City Attorney's opinion that "notes prepared by a City employee for the employee's own personal use are not public records and therefore not subject to public disclosure." Florida case law supports this conclusion and your City Attorney's admonition that "[e]ssential to this legal opinion is the fact that the notes are utilized only by the writer. Should the writer distribute the notes to anyone for any purpose, then the notes shall be deemed public records subject to Chapter 119 of the Florida Statutes."

Florida's Public Records Law, Chapter 119, Florida Statutes, requires that records made or received in connection with the transaction of official business by any public body, officer, or employee of the state, county, or municipality shall be open to public inspection and copying, unless there is a legislatively created exemption making such records confidential or exempt from disclosure.[2] Section 119.011(12), Florida Statutes, defines "[p]ublic records" to include

"all documents, papers, letters ... 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."

Thus, any portion of your handwritten notes that was not made or received in the official course of business would not be a public record. However, numerous court opinions and opinions of this office have concluded that if the purpose of a document prepared in connection with official business is to perpetuate, communicate, or formalize knowledge, then it is a public record without regard to whether it is in final form or the ultimate product of the agency.[3] Moreover, nonfinal documents need not be communicated to anyone in order to constitute a public record.[4]

As this office has noted, there is no "unfinished business" exception to the public inspection and copying requirements of the Public Records Law.[5] If a document is prepared in connection with the official business of a public agency and its purpose is to perpetuate, communicate, or formalize knowledge, then that document is a public record regardless of whether it is in final form or the ultimate product of an agency.[6]

Thus, any agency document, however it may be prepared, if it is circulated for review, comment or information, is a public record regardless of whether it is an official expression of policy or marked "preliminary" or "working draft" or similar label. Examples of such materials would include interoffice memoranda, preliminary drafts of agency rules or proposals which have been submitted for review to anyone within or outside the agency, and working drafts of reports which have been furnished to a supervisor for review or approval.[7]

Similarly, personal notes can be public records if they are intended to
communicate, perpetuate, or formalize knowledge of some type. In a 2005 Attorney General Opinion discussing the nature of personal notes, the handwritten notes prepared by an assistant city labor attorney during her interviews with city personnel were determined to be public records when those notes were used to communicate information to the labor attorney regarding possible future personnel actions.[8] Likewise, an Informal Attorney General Opinion concluded that handwritten notes prepared by a city council member regarding research on a matter being considered by the council and used at a workshop meeting as a reference in discussing the member's position were determined to be public records.[9]

In a 2007 appellate case, Miami Herald Media Company v. Sarnoff,[10] the court held that a memorandum that had been prepared by a city commissioner after a meeting with a former city official to discuss the city's affairs was a public record subject to disclosure. The memorandum summarized the details of the conversation at the meeting and contained alleged factual information about possible criminal activity. The parties to the lawsuit to determine whether this memorandum was a public record stipulated that the commissioner attended the meeting in his official capacity as a city commissioner; that the meeting related to official business of the city; that the memorandum was the final evidence, record, memorialization, and explanation of the knowledge garnered from the meeting by the city commissioner; that the memorandum was the commissioner's final work product with regard to the information and was not a precursor or preliminary document used to prepare another document; and that the memorandum was the only written record of what was said at the meeting.[11] The trial court had concluded that the memorandum did not fall within the meaning of a public record under Chapter 119, Florida Statutes, and the Miami Herald appealed. The newspaper's argument was that the memorandum was a public record because it "represents the final evidence of knowledge gained by a public official in his official capacity in connection with public business." The Third District Court of Appeal agreed and stated:

"[T]he subject memorandum in this case solely contains alleged factual information about possible criminal activity. It is undisputed that Commissioner Sarnoff is an "agency" for purposes of Chapter 119; he attended the subject meeting in his capacity as an elected city official; official city business was discussed at the meeting; and he drafted the May Memorandum to formalize and perpetuate his final knowledge gained at that meeting. The subject document was not a draft, or a note containing mental impressions that would later form a part of a government record."[12] (citations omitted)

However, Florida Courts have consistently held that under Chapter 119, Florida Statutes, public employees' notes to themselves which are designed for their own personal use in remembering certain things do not fall within the definition of "public record."[13] The Florida Supreme Court's decision in Shevin v. Byron, Hazless, Schaffer, Reid and Associates,[14] identified a "public record" as "any material prepared in connection with official agency business that is intended to

http://www.myfloridalegal.com/ago.nsf/Opinions/BDC2D02AF2E6B90485257808007B8... 7/11/2013
perpetuate, communicate, or formalize knowledge of some type"[15] and concluded that handwritten notes did not constitute public records. Subsequently, the First District Court of Appeal held that public employees notes to themselves "which are designed for their own personal use in remembering certain things do not fall within the definition of 'public record.'"[16] In The Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission, the First District Court of Appeal stated:

"Individual member's notes are not public record. The supreme court has elaborated on what does and does not constitute a public record in Shevin v. Byron, Harless, Schaffer, Reid & Assocs., ... As here, the plaintiffs in Byron, Harless specifically sought documents related to potential applicants for a public position. The court interpreted "public record" as any material prepared in connection with official agency business that is intended to perpetuate, communicate, or formalize knowledge of some type. ... The court specifically noted that materials prepared as drafts or notes which constitute mere precursors of governmental records, are not in themselves intended as final evidence of the knowledge to be recorded. ... The court concluded that handwritten notes made during or shortly after interviews with job prospects did not constitute public records."[17] (citations omitted)

Thus, it appears that public employees' notes to themselves which are designed for their own personal use in recollecting certain matters are not public records subject to inspection and copying pursuant to Chapter 119, Florida Statutes. You have advised this office that your notes do not perpetuate, communicate, or formalize knowledge, but were prepared for your own personal use to assist you in remembering matters discussed and that they have not been transcribed or shown to anyone else. Based on your characterization of these notes and the case law discussed above, I concur in your attorney's opinion that these personal notes are not public records. However, I would also caution you that the longer these notes are maintained, the closer in nature they appear to documents which would "perpetuate, communicate, or formalize knowledge" and could be characterized as public records.

In sum, it is my opinion that personal notes, taken in the course of conducting official business by a public employee, are not public records subject to the provisions of Chapter 119, Florida Statutes, if the notes have not been transcribed or shown to others and were not intended to perpetuate, communicate, or formalize knowledge.

Sincerely,

Bill McCollum
Attorney General

BM/tgh

http://www.myfloridalegal.com/ago.nsf/Opinions/BDC2D02AF2E6B90485257808007B8... 7/11/2013
[1] I must advise you that the discussion and conclusions reached in this opinion are based on the facts as you have presented them. This office may not act as a fact finder, but must rely upon the factual presentation of the requestor in responding to requests for Attorney General Opinions. See s. 16.01(3), Fla. Stat., and Department of Legal Affairs Statement Concerning Opinions available at: www.myfloridalegal.com.

[2] See also Art. I, s. 24, Fla. Const., establishing a right of access to any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf.

[3] See Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So. 2d 633 (Fla. 1980). See also State ex rel. Veale v. City of Boca Raton, 353 So. 2d 1194 (Fla. 4th DCA 1977), cert. denied, 360 So. 2d 1247 (Fla. 1978) (report prepared by assistant city attorney for the city council concerning suspected irregularities in the city's building department was a public record); and State ex rel. Copeland v. Cartwright, 38 Fla. Supp. 6 (Fla. 17th Cir. Ct. 1972), affirmed, 282 So. 2d 45 (Fla. 4th DCA 1973) (site plan review prepared for public building project must be open for public inspection, even though it was a preliminary working paper).

[4] See, e.g., Church of Scientology Flag Service Org., Inc., v. Wood, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997) (drafts and notes of an autopsy performed by the medical examiner are public records); Florida Sugar Cane League v. Florida Department of Environmental Regulation, No. 91-4218 (Fla. 2d Cir. Ct. June 5, 1992) (handwritten notes of agency staff "utilized to communicate and formulate knowledge within [the agency], are public records subject to no exemption"); and Inf. Op. to Michael S. Davis, dated March 16, 1992, in which this office advised that a personnel director's retention of notes which were originally handwritten, but were subsequently typed and kept by the director in his office for two years, "might well be construed by a court as evidence of the director's intent to perpetuate the information contained therein."

[5] Id. And see Pt. II, s. A. 2., Government in the Sunshine Manual (2010 ed.), "When are notes or nonfinal drafts of agency proposals subject to Ch. 119, F.S."

[6] See Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So. 2d 633 at 640 (Fla. 1980) ("Interoffice memoranda and intra-office memoranda communicating information from one public employee to another or merely prepared for filing, even though not a part of an agency's later, formal public product, would nonetheless constitute public records inasmuch as they supply the final evidence of knowledge obtained in connection with the transaction of official business."). See also State ex rel. Veale v. City of Boca Raton, 353 So. 2d 1194 (Fla. 4th DCA 1977), cert. denied, 360 So. 2d 1247 (Fla. 1978) (report
prepared by assistant city attorney for the city council concerning suspected irregularities in the city's building department was a public record); Warden v. Bennett, 340 So. 2d 977 (Fla. 2d DCA 1976) (working papers used in preparing a college budget were public records); and State ex rel. Copeland v. Cartwright, 38 Fla. Supp. 6 (Fla. 17th Cir. Ct. 1972), affirmed, 282 So. 2d 45 (Fla. 4th DCA 1973) (site plan review prepared for public building project must be open for public inspection, even though it was a preliminary working paper).

[7] See also Op. Att'y Gen. Fla. 97-23 (1997) (written comments and performance memoranda of school board members that were discussed with superintendent were public records); Inf. Op. to Richard B. Fulwider, dated June 14, 1993 (handwritten notes taken by negotiator for fire control district during collective bargaining sessions were public records).

[8] See Op. Att'y Gen. Fla. 05-23 (2005). See also City of Pinellas Park, Florida v. Times Publishing Company, No. 00-008234CI-19 (Fla. 6th Cir. Ct. January 3, 2001) (rejecting city's argument that employee responses to survey are "notes" which are not subject to disclosure because "as to each of the employees, their responses were prepared in connection with their official agency business and they were 'intended to perpetuate, communicate, or formalize knowledge' that they had about their department"); and Florida Sugar Cane League, Inc. v. Florida Department of Environmental Regulation, No. 91-4218 (Fla. 2d Cir. Ct. June 5, 1992), stating that handwritten notes of agency staff, "utilized to communicate and formulate knowledge within [the agency], are public records subject to no exemption."

[9] See Informal Opinion to Suzanne McLean, dated December 31, 1998. The handwritten notes were prepared to document communications between the city council member and officials from other municipalities regarding emergency medical services and collection rates in various municipalities. The council member brought the notes to the workshop and used them as a reference for her position on the issue and specifically cited to factual material contained in the notes. During the meeting, the council member stated that she had conducted a study and discussed her conclusions based upon that study, referring to her handwritten notes as containing information upon which she based her conclusions. Finally, the member distributed a document she had generated from the information contained in a portion of her notes. The informal opinion concluded that the handwritten notes represented formalized knowledge and were public records. Further, the opinion noted that the use of portions of the notes to generate another document to be distributed to other members of the council would not create an exception from the Public Records Law for such portions of the notes.

[10] 971 So. 2d 915 (Fla. 3d DCA 2007).

[11] Id. at 916.

[12] Supra n.10 at 917.

[14] 379 So. 2d 633 (Fla. 1980).

[15] Id. at 640.

[16] Justice Coalition v. The First District Court of Appeal Judicial Nominating Commission, 823 So. 2d 185, 192 (Fla. 1st DCA 2002). And see Lopez v. State, 696 So. 2d 725 (Fla. 1997); Coleman v. Austin, 521 So. 2d 247 (Fla. 1st DCA 1986).

[17] Id. at 192.

Florida Toll Free Numbers:
- Fraud Hotline 1-866-966-7226
- Lemon Law 1-800-321-5366
Advisory Legal Opinion - AGO 92-85

Number: AGO 92-85
Date: November 19, 1992
Subject: School board members retain copies of public records

Ms. Abbey G. Hairston
General Counsel
The School Board of Palm Beach County

RE: PUBLIC RECORDS-SCHOOL BOARDS-PALM BEACH COUNTY—individual school board members not required to maintain records which clerk of the school board as designated custodian of such records maintains at school administrative officers. ss. 119.021, 119.07, Fla. Stat.

QUESTION:

Must individual school board members retain copies of public records which are regularly maintained in the course of business by the clerk of the school board in the school board administrative offices?

SUMMARY:

Records which are regularly maintained by the clerk of the school board at the school board administrative offices need not be additionally maintained by the individual school board members.

Section 119.021, F.S., provides:

"The elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his designee, shall be the custodian thereof." (e.s.)

The statute's plain language requires the officer responsible for maintaining an office having public records to be the custodian of records made or received in the course of official business.[1] The public official, however, may designate a person to be the custodian of public records held by the office.[2]

You state that most of the records made or received by the individual school board members are duplicated and retained by the clerk of the school board. To the extent the clerk of the school board has been
designated the custodian of the records and the clerk maintains such records at the school's administrative offices, there is no statutory requirement that the individual school board member maintain duplicate records.

Section 119.07(1), F.S., states:

"Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or his designee...."

The custodian, therefore, may not restrict or circumvent a person's right of access to public records. [3] Thus, the appointment of the clerk of the school board as custodian of the school district's records may not be used to inhibit the public's right of access to such records.

Accordingly, while the individual school board members are responsible for maintaining the public records of their individual office's, to the extent such records are maintained by the clerk of the school board as the designated custodian, there is no statutory requirement that the records also be maintained by the individual school board members.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/t

[1] Cf. Tober v. Sanchez, 417 So. 2d 1053 (3 D.C.A. Fla., 1982) (director of county agency, as officer charged by law with the responsibility of maintaining the office is custodian of records and reports emanating from agency).

[2] Cf. Myakka Valley Ranches Imp. Assoc., Inc. v. City of Sarasota, Case No. 85-1248 CA-01 (12th Cir. Sarasota Co., May 22, 1985) (city must maintain within the city limits all nonexempt public records or copies of such records) and Tober at 1054 (agency head may not avoid his responsibility to maintain records by transferring documents to another agency or office).


Florida Toll Free Numbers:
- Fraud Hotline 1-866-966-7226
- Lemon Law 1-800-321-5366
Advisory Legal Opinion - INFORMAL

Number: INFORMAL
Date: December 31, 1998
Subject: Records, handwritten notes used at workshop meeting

Ms. Suzanne M. McLean
Town Attorney of Davie
Post Office Box 8549
Pembroke Pines, Florida 33084-0549

RE: PUBLIC RECORDS--MUNICIPALITIES--handwritten reference notes used at workshop meeting are public records. s. 119.011, Fla. Stat., and Art. I, s. 24, Fla. Const.

Dear Ms. McLean:

On behalf of the Town of Davie you ask whether handwritten notes are a public record if they are prepared by a council member regarding research on a matter under consideration by the council.

In sum, handwritten notes prepared by a council member regarding research on a matter under consideration by the council and used at a workshop meeting as a reference in discussing the member's position are public records.

You state that a request has been made for the handwritten notes and research prepared by a town council member in anticipation of a council workshop meeting to discuss emergency medical services. The notes were prepared to document communications between the council member and officials from other municipalities regarding emergency medical services and collection rates in various municipalities. The council member brought the notes to the workshop and used them as a reference to represent her position on the matter, specifically citing to factual material contained therein. During the meeting the member stated that she had conducted a study and discussed her conclusions based upon such study, referring to her handwritten notes as containing information upon which she based her conclusions. Further, the member distributed a document entitled "Transport Revenues" that was generated from the information contained in a portion of the notes.

You have provided a copy of your memorandum in which you conclude that
the handwritten notes are public records. In light of your firsthand knowledge of the situation and the manner in which the notes were used, this office agrees with the conclusion you have reached. The following discussion provides support for finding that handwritten notes are public records when prepared and used in the manner you have described.

Florida's Public Records Law, Chapter 119, Florida Statutes, requires that records made or received in connection with the transaction of official business by any public body, officer or employee of the state, county, or municipality shall be open to public inspection and copying, unless there is a legislatively created exemption making such records confidential or exempt from disclosure.[1] Section 119.011(1), Florida Statutes, defines "Public records" to include

"all documents, papers, letters . . . or other material, regardless of 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."

Initially, I would note that any portion of the handwritten notes that were not made or received in the official course of business would not be public records. It is well settled, however, that if the purpose of a document prepared in connection with official business is to perpetuate, communicate, or formalize knowledge, then it is a public record regardless of whether it is in final form or the ultimate product of the agency.[2] Moreover, nonfinal documents need not be communicated to anyone in order to constitute a public record.[3]

In this instance, the council member's use of the notes during the workshop meeting as a reference to discuss her position on the matter would indicate that the notes were prepared in order to perpetuate or formalize the knowledge that she had gained through her independent study. While the council member may not have referred to every detail in her notes during her presentation, she brought the notes to the meeting and had the formalized knowledge contained therein readily available for reference. Thus, it would appear that the notes are public records available for inspection.

In Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc.,[4] the Supreme Court of Florida contrasted public records with materials prepared as drafts or notes, which are mere "precursors" of governmental records not intended to be final evidence of the knowledge recorded. Reinforcing the decision in Byron, Harless, the Court in State v. Kokal, determined that certain trial preparation materials by state agency attorneys described as preliminary guides intended to aid the attorneys when they later formalized the knowledge were not public records subject to disclosure.[5] The materials considered in Kokal, however, were personal notes by state agency attorneys to themselves, characterized as "preliminary guides intended to aid the attorneys when they later formalized the knowledge."[6] In contrast, the notes prepared and used by the council member represented the end product of her study and were the formalized knowledge that was used as a reference in the workshop.

meeting.

Accordingly, handwritten notes prepared by a council member regarding research on a matter under consideration by the council are public records when those notes are made to perpetuate and formalize knowledge and are used as a reference during the council's discussion on the matter.

Given the council member distributed a document that was generated from information contained in a portion of the notes, you question whether that portion of the notes reflected in the document would not be a public record. As discussed above, the formalization of the knowledge in the notes in order to perpetuate it and use it as a reference for discussion at the workshop meeting is the key to its status as a public record. Any other use of the notes would not appear to alter this characterization. In contrast, it is only uncirculated materials which are merely preliminary or precursors to future documents, and which are not in and of themselves intended to serve as final evidence of the knowledge to be recorded, which fall outside the definition of a public record.[7]

In light of the conclusion that these handwritten notes represent formalized knowledge and are public records, it is my opinion that the use of portions of the notes to generate another document to be distributed to other members of the council does not create an exception from the Public Records Law for such portions of the notes.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk

[1] See also Art. I, s. 24, Fla. Const., establishing a right of access to any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf.

[2] See Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So. 2d 633 (Fla. 1980). See also, State ex rel. Veale v. City of Boca Raton, 353 So. 2d 1194 (Fla. 4th DCA 1977), cert. denied, 360 So. 2d 1247 (Fla. 1978) (report prepared by assistant city attorney for the city council concerning suspected irregularities in the city's building department was a public record); Warden v. Bennett, 340 So. 2d 977 (Fla. 2d DCA 1976) (working papers used in preparing a college budget were public records); and State ex rel. Copeland v. Cartwright, 38 Fla. Supp. 6 (Fla. 17th Cir. Ct. 1972), affirmed, 282 So. 2d 45 (Fla. 4th DCA 1973) (site plan review prepared for public building project must be open for public inspection, even though it was a preliminary working paper).
[3] See, e.g., Church of Scientology Flag Service Org., Inc. v. Wood, No. 97-688CI-07 (Fla. 6th Cir. Ct. February 27, 1997) (drafts and notes of an autopsy performed by the medical examiner are public records); Florida Sugar Cane League v. Florida Department of Environmental Regulation, No. 91-4218 (Fla. 2d Cir. Ct. June 5, 1992) (handwritten notes of agency staff "utilized to communicate and formulate knowledge within [the agency], are public records subject to no exemption"); and Inf. Op. to Michael S. Davis, March 16, 1992, in which this office advised that a personnel director’s retention of notes which were originally handwritten, but were subsequently typed and kept by the director in his office for two years, "might well be construed by a court as evidence of the director’s intent to perpetuate the information contained therein."


[6] Id. at 327.


Florida Toll Free Numbers:
- Fraud Hotline 1-866-966-7226
- Lemon Law 1-800-321-5366
VOTING CONFLICT LAW
SESSION II

VOTING CONFLICTS AND MISUSE
OF PUBLIC POSITION

By: Marion J. Radson, City Attorney
June 2005

I. INTRODUCTION

Voting Conflicts of Interest and Participation by Members of the City Commission and Appointed Board Members

Members of the city commission and appointed board members are required by law to vote on all matters unless there is a voting conflict. Section 286.012, F.S. (2005), provides in pertinent part:

286.012 Voting requirement at meetings of governmental bodies.--No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s.112.311, s. 112.313, or s. 112.3143. In such cases, said member shall comply with the disclosure requirements of s. 112.3143.

Commissioners and appointed board members must abstain from voting and not participate (influence the decision by oral or written communication, whether made by you or at your direction) on any matter which would inure to the special private gain or loss to any of the following:

- Yourself
- Your relative
  (Your father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.)
- Your business associate
  (A person or entity who is carrying on a business enterprise with you, regardless of the legal form of the business.)
- A principal by whom you are retained
(For example, your employer or a client of your law firm or other professional firm. If the principal retaining you is a corporation, then this also includes the parent organization or subsidiary of that corporation.)

Without first disclosing the nature of your interest in the matter.

II. MEMBERS OF THE CITY COMMISSION (ELECTED OFFICERS)

In addition to abstaining from voting in the situations described above, you must disclose the conflict, as follows:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; and

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing the appropriate form (attached) with the Clerk of the Commission, who should incorporate the form into the minutes.

EXCEPTION: Community Redevelopment Agency. (C.R.A.) - A commissioner who serves on a C.R.A. is not prohibited from voting as a member of the C.R.A., but must file the form.

III. BOARD MEMBERS (APPOINTED OFFICERS)

Although an appointed board member must abstain from voting in the situation described in Section I above, an appointed board member may participate in the discussion of the matter. However, the board member must disclose the conflict before making any attempt to influence the decision.

• If the conflict is known prior to the meeting, the conflict shall:

  be disclosed by a written memorandum (Commission on Ethics Form 8B attached), which should be filed with the staff liaison prior to the meeting in which consideration of the matter takes place. The memorandum shall:

  • become a public record upon filing,
immediately be provided to the other members of the agency; and

• be read publicly at the meeting held subsequent to the filing of the memorandum.

• **If the conflict is not disclosed or is unknown prior to the meeting, the disclosure or “conflict” shall:**

  be publicly stated at the meeting when it becomes known;

• be documented within 15 days after the oral disclosure, by filing a memorandum of voting conflict (Commission on Ethics Form 8B) with the person responsible for recording the minutes of the meeting, who will incorporate the form into the minutes of the meeting at which the oral disclosure was made,

• immediately be provided to other members of the board by copying Form 8B; AND

• be read publicly at the next meeting.

IV. **QUORUM**

When an elected or appointed board member is required to abstain from voting, the Florida Attorney General has opined that the board member may not be considered to be part of the quorum for purposes of voting. In other words, the abstention requirements of the voting conflict law causes the quorum to be composed of only those members who are entitled to vote. *(AGO 85-40).*

V. **SPECIAL PRIVATE GAIN**

Whether a particular matter will inure to the special private gain of a commissioner or board member (or a principal by whom he or she is retained) depends on the nature and effect of the measure being voted upon. Generally speaking, if the person (or “relative” or “principal” or “business associate”) stands to financially gain or lose by virtue of a particular measure, then it is considered a special private gain.

The Florida Commission on Ethics has the responsibility of interpreting and enforcing the state law. The Commission utilizes three tests to determine special private gain:
1) **Size of the Class Test:** Where the class of persons affected by the measure is large, a special private gain will result if the public officer’s interests are impacted to a significantly greater degree than those of other members of the affected class.

2) **Gain or Loss Test:** When the public officer stands to gain or lose as a direct result of the outcome of the commission’s or board’s decision, a special private gain may result.

3) **Remote and Speculative Test:** Even if a public officer stands to gain or lose as a result of the outcome of the decision, the Commission on Ethics has found no voting conflict when the gain or loss is too remote or speculative.

VI. **APPOINTMENT OR REAPPOINTMENT OF LOCAL OFFICERS (I.E., BOARD MEMBERS)**

The mayor and city commissioners are required by statutory law to consider the number and nature of the voting conflicts filed by board members when making appointments or reappointments to boards and committees. Section 112.3143(5), F.S.

VII. **MISUSE OF PUBLIC POSITION PROHIBITION**

A. Public officers, public employees, and local government attorneys may not corruptly use or attempt to use their official position or any property or resource within their trust, or perform their official duties, to secure a special privilege, benefit, or exemption for themselves or another. Section 112.313(6), F.S.

B. “Corruptly” as defined in Section 112.312(9), F.S., means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties. Mismanagement, “waste in government,” and negligent acts are not sufficient; it must be an intentional act done to benefit oneself or another.
VIII. ABSENCE FROM MEETING

If a commissioner or appointed board member is absent from an entire meeting at which a voting conflict of interest occurs, the Commission on Ethics has concluded that no voting conflict must be disclosed. However, if the commissioner or member absents himself or herself from a portion of that meeting, the Commission has concluded that the commissioner or member should disclose the conflict prior to leaving the meeting. (CEO 88-3, February 4, 1988)

IX. PENALTIES

Penalties for violation of this law 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.

X. CONCLUSION

Elected and appointed officers must vote on all matters unless there is a voting conflict of interest. A voting conflict arises when an officer obtains a special private gain as a result of the vote. Specific questions should be directed to the Florida Commission on Ethics at (850) 488-7864, or to the City Attorney's Office for a non-binding advisory opinion, or to a private attorney.
CONFLICT OF INTEREST

CITY PLANNING COMMISSION MEMBER ASSOCIATED WITH REAL ESTATE FIRM DOING BUSINESS WITH THE CITY

To: (Name withheld at the person's request.)

SUMMARY:

No prohibited conflict of interest exists where a city planning commission member is associated with a real estate firm which is doing business with the city by way of contractual agreements with individuals serving as real estate appraisers. While Section 112.313(7)(a), Florida Statutes, prohibits a public officer from having a contractual relationship with a business entity doing business with his agency, this provision would not be violated as the real estate firm is doing business with the city rather than with the planning commission.

QUESTION:

Does a prohibited conflict of interest exist where a city planning commission member is associated with a real estate firm which has contractual relationships with individuals who provide real estate appraisal services for a fee to the city?

Under the circumstances presented, your question is answered in the negative.

In your letter of inquiry you advise that .... serves as a member and Chairman of the Haines City Planning Commission. The Planning Commission serves as an advisory body to the City Commission with respect to zoning, development, comprehensive planning, and land use matters. You further advise that the Planning Commission member is a licensed real estate broker and is associated with a local real estate firm. When he acts as the real estate broker or agent for a real estate transaction, the commission is paid to the real estate firm, which retains a portion of that commission in consideration of office space and certain services which it provides. The balance is paid to the Planning Commission member by the real estate firm. The Planning Commission member does not share in the corporate profits of, nor is he a stockholder or officer of, the real estate firm.

The real estate firm also has contractual relationships with individuals who provide real estate appraisal services. Two of these individuals have been asked by the City to prepare appraisal reports on parcels of property which the City was or is contemplating purchasing or trading for other property. Some of these reports have been prepared and submitted to the City, while others are in the process of being prepared. The City has been billed for the completed appraisal services. When paid by the City, the real estate firm will distribute a portion of the fees to the appraisers.

You question whether a prohibited conflict of interest is created under the Code of Ethics for Public Officers and Employees by virtue of these circumstances. You note that the member receives no compensation as the result of the payment of an appraisal fee and that he did not participate in the selection of the appraisers, the preparation of the appraisal reports, and the determination of the fees to be paid for the appraisal services.

The Code of Ethics for Public Officers and Employees provides in relevant part:

CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP. -- No public officer or employee of an agency shall
have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he is an officer or employee . . . ; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties. [Section 112.313(7)(a), Florida Statutes (1987).]

This provision prohibits a public officer from having a contractual relationship with a business entity which is doing business with, or is subject to the regulation of, his agency. We previously have advised that Section 112.313(7)(a) would prohibit a public officer from being an associate of a real estate firm which is doing business with his agency. See CEO 84-88. Under the facts you have presented, however, it does not appear that the subject firm is doing business with the Planning Commission. Nor does it appear that the real estate firm would be subject to the regulation of the Planning Commission.

Accordingly, we find that under the circumstances presented no prohibited conflict of interest exists where the subject Planning Commission member is associated with a real estate firm which has independent contractor agreements with individuals who provide real estate appraisal services to the City.
WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowing or voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer’s father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; and

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)
APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

1. ____________________________________________________________, hereby disclose that on ______________________, 20 ___

(a) A measure came or will come before my agency which (check one)

☐ inured to my special private gain or loss;
☐ inured to the special gain or loss of my business associate, ___________________________________________________.
☐ inured to the special gain or loss of my relative, ___________________________________________________.
☐ inured to the special gain or loss of ___________________________________________________, by whom I am retained; or
☐ inured to the special gain or loss of ___________________________________________________, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Date Filed ____________________________________________ Signature ____________________________________________

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.
GIFT LAW
SESSION II

THE GIFT LAW

By: Dana Crosby, Assistant City Attorney
   June 2005

I. INTRODUCTION.

Gainesville elected officials, certain appointed board members and some city employees are subject to the Florida "gift law" set forth in §112.313, Florida Statutes. All city employees are subject to City Personnel Policy No. 28, the "Code of Ethical Standards" which includes a provision about the acceptance of gifts. Lobbyists are also required under some circumstances to report the giving of gifts to a reporting individual. If a gift can be and is accepted, that gift may need to be reported; however, there are times when officers and employees must refuse to accept a gift. Failure to abide by the law can lead to removal from office, suspension, and fines.

II. THE GIFT LAW APPLIES TO...

The "gift law" stated in Florida Statutes applies to those specific public officers and employees who are required to file financial disclosure. For Gainesville city officials (elected or appointed), this usually means filing either Form 1 or 6, the "Statement of Financial Interests". If you are uncertain whether you are required to file financial disclosure, you may contact the Clerk of the Commission, the Supervisor of Elections, or the City Attorney's office.

Generally speaking, all persons holding elected office and many appointed members of boards, commissions or authorities, excluding members of advisory bodies, must file financial disclosure, and are therefore considered reporting individuals. Certain City employees (e.g. City Manager, City Attorney) must also file financial disclosure.

III. WHAT IS - AND WHAT IS NOT -- A "GIFT"?

If you are a reporting individual and you are offered a gift, the next question is whether the article or thing of value is a "gift" as defined in the law (§112.312, Florida Statutes). For purposes of ethics in government and
financial disclosure required by law, a "gift" means something that is accepted by a recipient or on a recipient's behalf for which something of equal or greater value is not exchanged within 90 days. A gift may include real property; the use of real property; tangible or intangible (e.g. stocks, notes, leases) personal property; the use of tangible or intangible personal property; a preferential rate or terms on a debt, loan, goods, or services, which rate is below the customary rate (not a government rate available to all other similarly situated government employees or officials or not a rate which is available to similarly situated members of the public by virtue of occupation, etc.); forgiveness of a debt; transportation, other than that provided to a public officer or employee by an agency in relation to officially approved governmental business, lodging, or parking; food or beverage; membership dues; entrance fees, admission fees, or tickets to events, performances, or facilities; plants, flowers, or floral arrangements; professional or personal services provided for which a fee is normally charged by the person providing the services; and any other similar service or thing having an attributable value.

A "gift" does not include the following:

1. Salary, benefits, services, fees, commissions, gifts, or expenses associated primarily with the donee's employment, business, or service as an officer or director of a corporation or organization.

2. Contributions or expenditures reported pursuant to chapter 106 (campaign finance), campaign-related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party.

3. An honorarium or an expense related to an honorarium event paid to a person or the person's spouse.

4. An award, plaque, certificate, or similar personalized item given in recognition of the donee's public, civic, charitable, or professional service.

5. An honorary membership in a service or fraternal organization presented merely as a courtesy by such organization.

6. The use of a public facility or public property, made available by a governmental agency, for a public purpose.
7. Transportation provided to a public officer or employee by an agency in relation to officially approved governmental business.

8. Gifts given by a state, regional, or national organization if the organization promotes the exchange of ideas between, or the professional development of, governmental officials or employees, and if the membership consists primarily of elected or appointed public officials or staff.

IV. CAN A GIFT BE ACCEPTED, AND MUST A GIFT BE REPORTED?

If you are a reporting individual and the item offered falls under the definition of a "gift", the next question is whether the acceptance of the gift is prohibited or whether the gift must be disclosed. A reporting individual or "procurement employee" (one who participates in the procurement of contractual services or commodities) is prohibited from soliciting any gift from a "lobbyist". A lobbyist means any person who seeks to influence decision-making or encourages the passage, defeat or modification of any proposal or recommendation before the government. A reporting individual (e.g., mayor, city commissioner, and some board members and some city employees) is prohibited from accepting a gift valued at more than $100 from a lobbyist, from a partner, firm, employer, or principal of the lobbyist, or from a political action committee. This prohibition does not apply to gifts that are accepted by a reporting individual on behalf of the city government; however, custody of such a gift must be transferred to the government in a reasonable period of time.

A reporting individual may accept (without need to report) a gift from a lobbyist that is valued at $100 or less. The lobbyist must inform the reporting individual that the lobbyist will report the gift if the gift is valued over $25 but not more than $100.

Under no circumstances may a public officer or employee or family accept any compensation, payment or gift when the item is given to influence a vote or any other action where the officer or employee is expected to participate in an official capacity. This prohibition overrides all other exceptions and is the cornerstone of the code of ethics. (s. 112.313(4), F.S.)

A reporting individual must report all other gifts that have a value of more than $100. The report must be filed quarterly (see Form 9). This report is required even though
the gift is not from a lobbyist. Gifts excluded from this requirement are gifts from relatives, gifts prohibited from being accepted, or gifts disclosed elsewhere.

The City's gift rule, City Personnel Policy 28, applies to all City employees and prohibits an employee from soliciting or accepting free or discounted goods or services, gifts, favors or anything else of value. However, free or discounted services and gifts available to the general public are permitted. The City Manager is authorized to decide whether any particular activity conforms to the City's Code of Ethics.

V. CONCLUSION.

The Gainesville and state Codes of Ethics are formalized rules of conduct to preserve and maintain the integrity of the government and the governmental process. When a gift is offered, consider the issues raised in this memo. First, are you a reporting individual? Is this item a gift? Is the gift giver considered a "lobbyist" of the government? What is the estimated value of the proposed gift? And remember -- it is never impolite to say, "No, thank you" whenever a gift is offered in the public setting.
COMMISSION ON ETHICS
FLORIDA COMMISSION ON ETHICS

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

2013
State of Florida
COMMISSION ON ETHICS

Susan Horovitz Maurer, Chair
Ft. Lauderdale

Morgan R. Bentley, Vice-Chair
Sarasota

Matthew F. Carlucci
Jacksonville

I. Martin Ford
Vero Beach

Jean M. Larsen
Port St. Lucie

Linda M. Robison
Pompano Beach

Edwin Scales, III
Key West

Robert J. Sniffen
Tallahassee

Stanley Weston
Jacksonville

Virlindia Doss
Executive Director
P.O. Drawer 15709
Tallahassee, FL 32317-5709
www.ethics.state.fl.us
(850) 488-7864*

*Please direct all requests for information to this number.
# TABLE OF CONTENTS

I. HISTORY OF FLORIDA’S ETHICS LAWS ............................................................... 1

II. ROLE OF THE COMMISSION ON ETHICS ..................................................... 1

III. THE ETHICS LAWS .................................................................................. 1

   A. PROHIBITED ACTIONS OR CONDUCT .................................................. 2
      1. Solicitation or Acceptance of Gifts ....................................................... 2
      2. Unauthorized Compensation ............................................................... 2
      3. Misuse of Public Position ..................................................................... 2
      4. Disclosure or Use of Certain Information ......................................... 2
      5. Solicitation or Acceptance of Honoraria ............................................ 3

   B. PROHIBITED EMPLOYMENT AND BUSINESS RELATIONSHIPS ......... 3
      1. Doing Business With One’s Agency ....................................................... 3
      2. Conflicting Employment or Contractual Relationship .................. 3
      3. Exemptions ......................................................................................... 3
      4. Additional Exemption ....................................................................... 4
      5. Lobbying State Agencies by Legislators ......................................... 4
      6. Employees Holding Office .................................................................. 4
      7. Professional & Occupational Licensing Board Members ............... 5
      8. Contractual Services: Prohibited Employment ................................ 5
      9. Local Government Attorneys ............................................................. 5

   C. RESTRICTIONS ON APPOINTING, EMPLOYING, AND CONTRACTING
      WITH RELATIVES ................................................................................. 5
      1. Anti-Nepotism Law ........................................................................... 5
      2. Additional Restrictions ..................................................................... 5

   D. POST OFFICEHOLDING & EMPLOYMENT (REVOLVING DOOR) RESTRICTIONS .... 5
      1. Lobbying By Former Legislators, Statewide Elected Officers,
         and Appointed State Officers ............................................................ 5
      2. Lobbying By Former State Employees .............................................. 6
      3. Additional Restrictions on Former State Employees ....................... 6
      4. Lobbying By Former Local Government Officers and Employees ...... 7

   E. VOTING CONFLICTS OF INTEREST ..................................................... 7

   F. DISCLOSURES ...................................................................................... 7
      1. Form 1 - Limited Financial Disclosure ............................................ 8
      2. Form 1F - Final Form 1 ..................................................................... 10
      3. Form 2 - Quarterly Client Disclosure .............................................. 10
      4. Form 6 - Full and Public Disclosure ............................................... 10
      5. Form 6F - Final Form 6 .................................................................... 11
      6. Form 9 - Quarterly Gift Disclosure .................................................. 11
      7. Form 10 - Annual Disclosure of Gifts from Governmental Entities and
         Direct Support Organizations and Honorarium Event-Related Expenses ........................................... 11
8. Form 30 - Donor’s Quarterly Gift Disclosure .........................................................12
9. Forms 1X and 6X – Amendments ...........................................................................12

IV. AVAILABILITY OF FORMS .................................................................................12

V. PENALTIES ...........................................................................................................13
   A. For Violations of the Code of Ethics ....................................................................13
   B. For Violations by Candidates .............................................................................13
   C. For Violations by Former Officers and Employees .............................................13
   D. For Lobbyists and Others ..................................................................................13
   E. Felony Convictions: Forfeiture of Retirement Benefits ....................................13
   F. Automatic Penalties for Failure to File Annual Disclosure ................................13

VI. ADVISORY OPINIONS .......................................................................................14
   A. Who Can Request an Opinion ...........................................................................14
   B. How to Request an Opinion ..............................................................................14
   C. How to Obtain Published Opinions ...................................................................14

VII. COMPLAINTS .....................................................................................................14
    A. Citizen Involvement ..........................................................................................14
    B. Confidentiality ................................................................................................14
    C. How the Complaint Process Works ..................................................................15
    D. Dismissal of Complaint at Any Stage of Disposition ......................................15
    E. Statute of Limitations ......................................................................................15

VIII. EXECUTIVE BRANCH LOBBYING .................................................................15

IX. WHISTLE-BLOWER’S ACT ................................................................................16

X. ADDITIONAL INFORMATION ............................................................................16

XI. ONLINE TRAINING ............................................................................................17
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 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;
- 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 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, committee of continuous existence, 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. [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 committee of continuous existence. [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. 112.32’5, 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.]

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 there of 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 positions 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, committee of continuous existence, lobbyist who has lobbied the person's agency within the past 12 months, or the partner, firm, employer, or principal of such a lobbyist. 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 committees of continuous existence, 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 own 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 Exemption

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.]

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.]

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. [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, the House Minority Party Office; the Chancellor and Vice-Chancellor 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)(a5, 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

No state public officer is prohibited from voting in an official capacity on any matter. However, a state public officer who votes on a measure which inures 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 of a corporate principal by which he or she is retained, of a relative, or of a business associate, must file a memorandum of voting conflict on Commission Form 8A with the recording secretary within 15 days after the vote occurs, disclosing the nature of his or her 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 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 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.]

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, Workforce Florida, and Space Florida; 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.

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; an expressway authority or transportation authority; a community college or junior college district board of trustees; a board having the power to enforce local code provisions; a board of adjustment; a planning or zoning 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 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, public counsel, full-time state employees serving as counsel or assistant counsel to a state agency, a deputy chief judge of compensation claims, a judge 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:

FCRM 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; 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 5 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 who files FORM 1 or FORM 6 shall knowingly accept, directly or indirectly, any expenditure made for the purpose of lobbying. This may include honorarium event related expenses that formerly were permitted under Section 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.]

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 or committee of continuous existence; a lobbyist who lobbies the reporting individual’s or procurement employee’s agency; and the partner, firm, employer, or principal of such a lobbyist. 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.]

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 head of their agencies for copies of the form or download it from 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 officials 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, 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.

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, denotation, 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.

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.

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. [Sec. 112.317, Fla. Stat.]

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.

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.

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.

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.

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. Otherwise, the Commission is unable to take action, even after learning of such misdeeds through newspaper reports or telephone calls.

Should you desire assistance in obtaining or completing a complaint form (FORM 50), you may receive either by contacting the Commission office at the address or phone number shown on the inside front cover of this booklet.

B. Confidentiality

The complaint, as well as all proceedings and records relating to the complaint, is confidential until the accused requests that such records be made public or until the complaint 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 to members of the public or press, so long as the complaint remains in a confidential stage.

IN NO EVENT MAY A COMPLAINT BE FILED OR DISCLOSED WITH RESPECT TO A CANDIDATE OR ELECTION ON THE DAY OF THE ELECTION, OR WITHIN THE FIVE CALENDAR DAYS PRECEDING THE ELECTION DATE.
C. How the Complaint Process Works

The Commission staff must forward 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.

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.

D. 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.]

E. 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.
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.

XII. ONLINE TRAINING

Through a project funded by the Florida Legislature, an online workshop addressing Florida's Code of Ethics, Sunshine Law, and Public Records Acts, is now available. See www.log.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.