

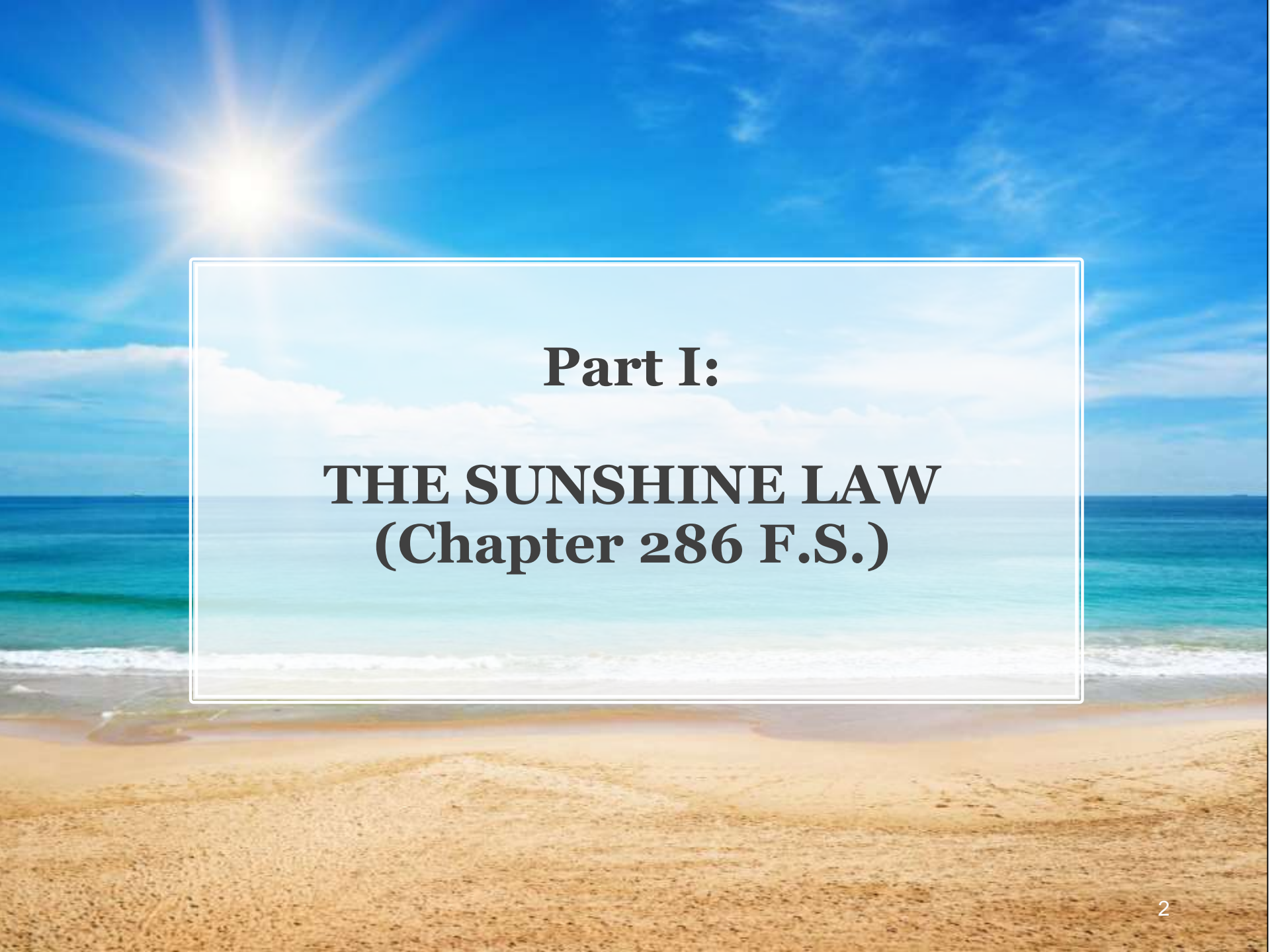


# Sunshine, Public Records, and Ethics Laws

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**Part I:**

**THE SUNSHINE LAW**  
**(Chapter 286 F.S.)**

# Florida Statute § 286.011

**Provides the right of access to governmental proceedings at the state and local levels.**

- (1) All **meetings** of any board or commission of any state agency or authority or of any **agency or authority** of any county, **municipal** corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, 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.

# Florida Statute § 286.011

## Minutes Required.

(2) The **minutes** of a meeting of 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**. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

# ***Jackson v. City of South Bay,***

358 So.3d 18 (Fla. 4th DCA 2023)

- Minutes must be promptly recorded and open to public inspection
- **There is no good faith exception**
- Reasonable attorney's fees and costs **shall be** assessed to enforce a violation

# Notice

**Must be reasonable.**

# Location

**Must be open and accessible to the public.**

# Minutes

**Must be written, promptly approved and open to the public for inspection.**





# What is a public meeting?

- 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, including but not limited to the following examples:
  - Both formal and casual meetings of two or more board members
  - Written correspondence (e.g., emails, texts, memos, social media posts, etc.) between board members with comments being provided to other members
  - Telephone conversations between two or more board members
  - Meeting of liaisons of two or more board members

# **Florida Statute § 286.011**

## **Who does it apply to?**

- The statute is “broadly construed to effect its remedial and protective purposes.”
- Applicable to elected and appointed bodies.
- Advisory boards are subject to Sunshine Law even though their recommendations are not binding upon the board or commission that created them.
- A single member of a board who has been delegated the authority to act (take official action) on behalf of the board (i.e., lease of land) is subject to the Sunshine Law.
- If a board or committee is delegated any decision-making authority by a public official, its meetings are subject to the Sunshine Law.



# Slippery Slopes



# Slippery Slope I

## **E-mail, text messages, and other written communications between board members**

The Sunshine Law requires boards to meet in public; boards may not take action on or engage in private discussions of board business via written correspondence, e-mails, text messages, or other electronic communications. Thus, members of an advisory committee created to make recommendations to the superintendent on school attendance boundaries violated the Sunshine Law when they exchanged private electronic communications (emails and Facebook messages) relating to committee business. *Linares v. District School Board of Pasco County*, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018).

Similarly, municipal commissioners may not use an electronic newsletter to communicate among themselves on issues that foreseeably may come before the commission. In AGO 09-19 it was determined that members of a city board or commission may not engage on the city's Facebook page in an exchange or discussion of matters that foreseeably will come before the board or commission for official action.

# Slippery Slope II

## **Selection and screening committees**

The Sunshine Law applies to advisory committees created by an agency to assist in the selection process. In *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983), a committee created to screen applications and make recommendations for the position of a law school dean was held to be subject to the Sunshine Law. By screening applicants and deciding which applicants to reject from further consideration, the committee performed a policy-based, decision-making function delegated to it by the president of the university. In *Krause v. Reno*, 366 So. 2d 1244 (Fla. 3d DCA 1979) it was held that the Sunshine Law governs advisory group created by city manager to assist in screening applications and to recommend several applicants for the position of chief of police.

However, if the sole function of the screening committee is simply to gather information for the decision-maker, rather than to accept or reject applicants, the committee's activities are outside the Sunshine Law. *Cape Publications, Inc. v. City of Palm Bay*, 473 So. 2d 222 (Fla. 5th DCA 1985), held that the Sunshine Law was not violated when the city manager, who was responsible for selecting the new police chief, asked several people to sit in on the interviews, as the only function of this group was to assist the city manager in acquiring information on the applicants he had chosen by asking questions during the interviews and then discussing the qualifications of each candidate with the city manager after the interview.

# Agendas

The Sunshine Law does not mandate that an agency provide notice of each item to be discussed via a published agenda although the Attorney General's Office has recommended the publication of an agenda, if available. The courts have rejected such a requirement because it could effectively preclude access to meetings by members of the general public who wish to bring specific issues before a governmental body.

Thus, the Sunshine Law does not require boards to consider only those matters on a published agenda. “[W]hether to impose a requirement that restricts every relevant commission or board from considering matters not on an agenda is a policy decision to be made by the legislature.” *Law and Information Services, Inc. v. City of Riviera Beach*, 670 So. 2d 1014, 1016 (Fla. 4th DCA 1996).

# Luncheon meetings

Public access to meetings of public boards or commissions is the key element of the Sunshine Law, and public agencies are advised to avoid holding meetings in places not easily accessible to the public. The Attorney General's Office has suggested that public boards or commissions avoid the use of luncheon meetings to conduct board or commission business. These meetings may have a "chilling" effect upon the public's willingness or desire to attend. People who would otherwise attend such a meeting may be unwilling or reluctant to enter a public dining room without purchasing a meal and may be financially or personally unwilling to do so. Inf. Op. to Campbell, February 8, 1999; and Inf. Op. to Nelson, May 19, 1980.

# Tape recording or Internet archive as minutes

The Sunshine Law does not require that public boards and commissions tape record their meetings. See AGO 86-21. However, other statutes may require that certain proceedings be recorded. See *Carlson v. Department of Revenue*, 227 So. 3d 1261 (Fla.1st DCA 2017) (statute mandating that a “complete recording” be made of portions of a closed negotiation team meeting requires more than an agenda and meeting notes).

However, while a board is authorized to tape record the proceedings if it chooses to do so, the Sunshine Law also requires written minutes. AGO 75-45. Similarly, while a board may archive the full text of all workshop discussions conducted on the Internet, written minutes of the workshops must also be prepared and promptly recorded. AGO 08-65. Moreover, the tape recordings are public records.



**While the Sunshine Law does not specify the type of notice which must be given in all cases, the following notice guidelines are suggested:**

1. The notice should contain the time and place of the meeting and, if available, an agenda, or if no agenda is available, a statement of the general subject matter to be considered.
2. The notice should be prominently displayed in the area in the agency's offices set aside for that purpose, e.g., for Citys, in City hall, and on the agency's website.
3. Except in the case of emergency or special meetings, notice should be provided at least 3 days prior to the meeting. Emergency sessions should be afforded the most appropriate and effective notice under the circumstances.
4. Special meetings should have no less than 24 and preferably at least 72 hours reasonable notice to the public. See *Yarbrough v. Young*, 462 So. 2d 515 (Fla. 1st DCA 1985) (three days notice of special meeting deemed adequate).
5. The use of press releases, faxes, e-mails, and/or phone calls to the local news media is encouraged in providing notice of upcoming meetings.

# Florida Statute § 286.0114

## Public Participation

- Requires that members of the public be given a “reasonable opportunity to be heard on a proposition before a board or commission.”
- The statute limits how a board or commission may restrict such opportunity to be heard (e.g., amount of time given, request forms, procedures for group representatives to speak on behalf of a group, designated time for public comment).
- The statute provides for exemptions (e.g., emergencies - if compliance would result in unreasonable delay, ministerial acts, an exempt meeting, quasi-judicial hearings).
- The statute provides for enforcement via injunction and the award of attorney’s fees for violations.
- A violation by a board or commission of this statute will NOT void the official action taken by such board or commission.

# Florida Statute § 286.011

## Consequences for Violations:

- Criminal penalties;
- Removal from office;
- Non-criminal infractions (AGO);
- Civil actions for injunctive and declaratory relief;
- Attorney's fees; and
- Action taken in violation of law is void *ab initio*.

# Former Sebastian Council Members violate Sunshine Law

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## Former Sebastian council members Gilliams, Parris sentenced for Sunshine Law violations

11 PHOTOS  
3:53 p.m. EDT Sep. 14, 2021

[f](#) [t](#) [e](#)

A black and white photograph showing two men in suits and ties, identified as Damien Gilliams and Pamela Parris, standing in a courtroom. They are both wearing face masks. To their right, a police officer in a dark uniform and helmet is also visible, wearing a face mask. The background is slightly out of focus, showing what appears to be a courtroom setting.

Former Sebastian City Council members Damien Gilliams and Pamela Parris appeared in Circuit Court on Tuesday, Sept. 14, 2021, for a sentencing hearing before Circuit Court Judge Michael Linn after being convicted of violating the state Sunshine Law and perjury. Gilliams was sentenced to more than 300 days in jail and fined \$1,500 and Parris was sentenced to 210 days in jail and fined \$2,500.

PATRICK DOVE/TCPALM

*Gilliams v. State,*  
359 So.3d 784  
Judge Cicklin’s “Clarion Call”

- Meetings of two or more fellow government officials who are subject to the Sunshine Law **are not allowed** if any words of any type pertaining to any possible foreseeable issue will be communicated in any way **unless they are open to the public to whom reasonable notice has been provided.**
- There is **rarely any purpose for a private meeting or communication** between two or more government officials who are both subject to the Sunshine Law. Those who engage in such activity **widely open themselves to allegations** that some aspect of the governmental decisional process has unlawfully occurred behind closed doors. Any aspect of the decisional process—ranging from whether to conduct a meeting in the first instance to the concept of terminating administrative staff to the seemingly inane decision as to which government officials will even make a motion to begin open public discussion—is part of the official decisional process and must be wide-open and advertised in advance to the public.

# “Clarion Call”, p2

- Under Florida law, there is **no such thing as an “informal” conference or “unofficial” caucus or pass-you-in-the-hallway information gathering (or sharing)** by two or more government officials subject to the Sunshine Law which would thereby remove such communication from the Sunshine Law’s ambit. Indeed, **such “innocuous” meetings have been held to be illegal** and nothing short of the unlawful crystallization of secret decisions to a point just short of public discussion and ceremonial acceptance. And **whether done personally or through surrogates (such as aide-to-aide), such meetings are illegal** under Florida’s Sunshine Law.
- Any attempt to **distinguish between a “formal,” “informal,” “ministerial,” “informational gathering-only,” or “just a listening” meeting** between two or more government officials—for purposes of determining whether the Sunshine Law applies—**is by itself alien to the law’s design, exposing it to the very evasions which it was designed to prevent.**



# “Clarion Call” p3

- Because a violation of Florida’s Sunshine Law can be investigated and charged as a crime, all of those law enforcement and prosecutorial techniques, such as the issuance of subpoenas for cell phone records are but a signature away. In these cases, prosecutors easily gathered data and produced it for the jury showing numerous texts, emails, telephone conversations, and voicemails over a wide-ranging period between all three city councilmembers.
- When in any doubt as to whether a meeting or communication, either directly or indirectly between two or more government officials may be illegal under the Sunshine Law, the easy answer is: “LEAVE.” See *City of Miami v. Berns*, 245 So. 2d 38, 41 (Fla. 1971) (“The evil of closed door operation of government without permitting public scrutiny and participation is what the law seeks to prohibit. If a public official is unable to know whether by any convening of two or more officials he is violating the law, he should leave the meeting forthwith.”).

## “Clarion Call” p4

- **Lying, under oath**, about any matter that is material to an alleged Sunshine Law violation is **considered as an additional crime of perjury** and every individual lie constitutes an individual statutory crime against each person with each **separate charge**. Depending on the context, perjury can be a misdemeanor or a felony under Florida law.

# Former Sumter County Commissioner, Oren Miller

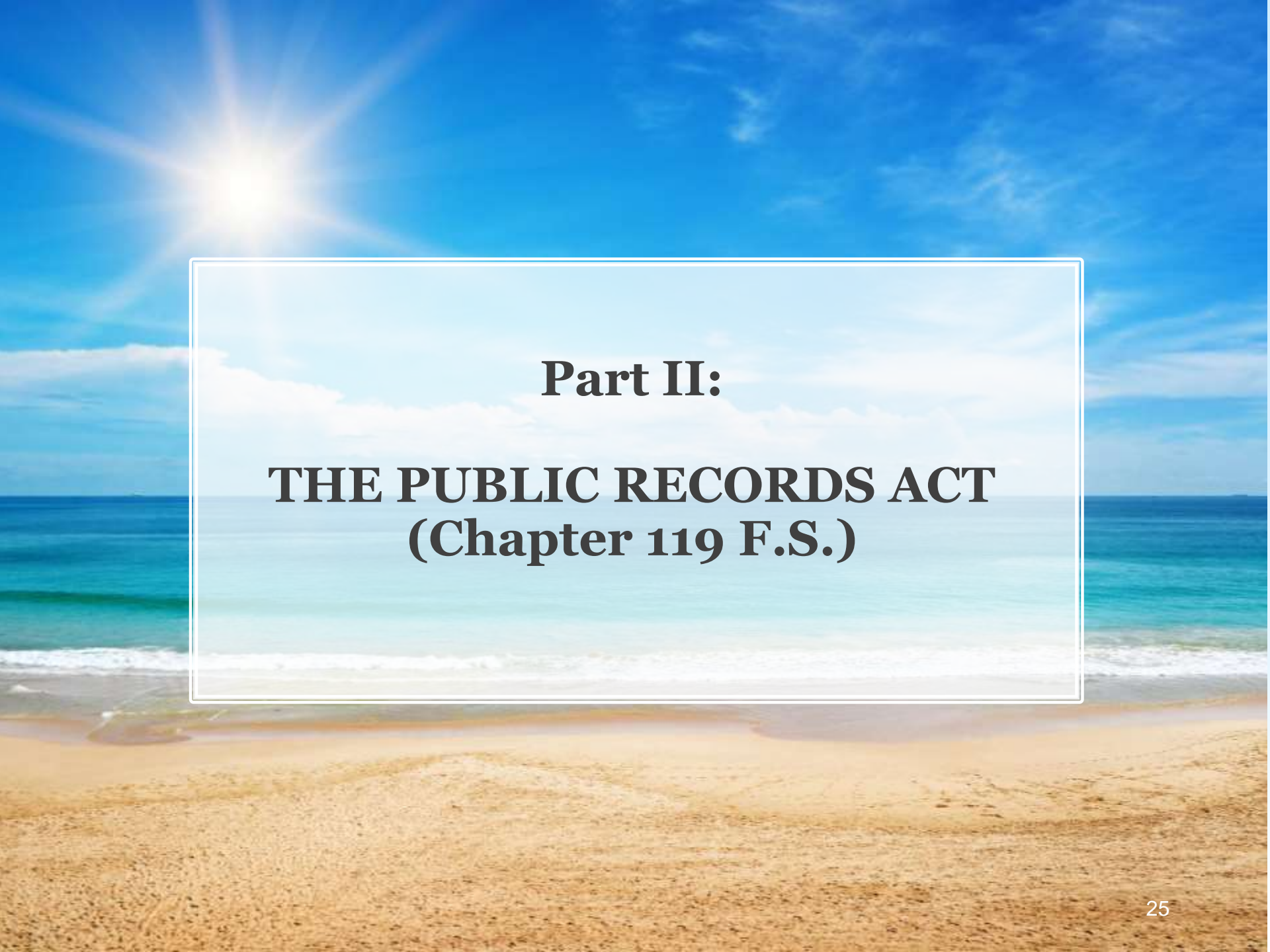
- **Convicted of felony perjury** for lying about calls with another former Sumter County Commissioner
- **Removed from office** by Governor for felony conviction
- **Served 75 days in jail**
- **Conviction reversed** on appeal

# You Can Cure a Violation

- Sunshine Law violations may be cured by independent, final action taken completely in the Sunshine.
- No rubber stamp meeting

**Cure... Don't Ignore**





**Part II:**  
**THE PUBLIC RECORDS ACT**  
**(Chapter 119 F.S.)**

# PUBLIC RECORDS

## What is a Public Record

Defined as:

- **All** documents, papers, letters, maps, books, tapes, photos, films, sound recordings, data processing software or **other material**
- Regardless of physical form, characteristics or means of transmission (or **location**)
- Made or received pursuant to law or ordinance in connection with the transaction of official business by any agency (**or its officials/employees/agents/advisory board members**).
- Includes all materials intended to perpetuate, communicate, or formalize knowledge.



# PUBLIC RECORDS

## What is a Public Record

Examples:

- Agenda and meeting minutes
- Audio and video recordings and photographs
- Home phone, personal e-mail, and address lists
- E-mails (City computer and personal computer)
- Text Messages (City phone and personal phone)
- Social Media Posts (Official page and comments; maybe personal page)
- Advisory Board member's e-mail or text explaining a Board issue via e-mail to a resident or another Board member
- Department official records
- Interoffice memos and internal policies

# PUBLIC RECORDS

## Social Media Accounts

*Linkde v. Freed*, 144 S.Ct. 756 (2024)

- The United States Supreme Court acknowledged that public officials have the right to speak about public affairs in their personal capacities.
- **HOWEVER**, a public official can be held liable under 42 U.S.C. s 1983 for blocking members of the public or deleting their comments. Furthermore, social media posts could constitute **public records** that must be maintained and produced upon request in accordance with the Public Records Act.
  - **Best Practice 1**: Avoid “ambiguous” accounts that are partially personal and partially city-related. Use separate accounts for city and private matters.
  - **Best Practice 2**: Screenshot and forward any city-related items to your city account to ensure that they are preserved and easily searchable in the event of a public records request.

# PUBLIC RECORDS

## What is a Public Record

Examples continued:

- Drafts:
  - Documents circulated for review, comment or to perpetuate information. Examples may include:
    - draft reports
    - draft policies
    - draft minutes
    - draft agenda items
    - draft ordinances and resolutions

# PUBLIC RECORDS

## What is NOT a Public Record

- Drafts:
  - Preliminary drafts or notes not intended as final evidence of the knowledge recorded and intended for personal use are **not** a public record. Examples include:
    - Personal notes from a meeting used to jog your memory
    - Drafts of a document not yet finalized or circulated
      - Resolutions being prepared by the author
      - Meeting minutes being prepared by the meeting secretary or clerk
      - Policies being drafted by the City Attorney

# PUBLIC RECORDS

## What is NOT a Public Record

- Personal records:
  - Invitation to non-City/Board related social event or birthday card from co-workers sitting on your desk at work
  - Text messages on personal cell phone from co-workers or fellow board members about non-work/non-board related matters
  - Social media post by board member about non-board/non-City related matters and other board members' general responses

# PUBLIC RECORDS

## What is NOT a Public Record

- **Bottom-Line:** There is very little dealing with City business that is NOT a public record
  - Location and privacy do not matter
  - Service contractors' and agents' records may be public
  - Record or its metadata may exist somewhere
  - Your e-mail or text may be on the front page of the newspaper
- **If you have concerns, do not create a record. Pick-up the phone or speak directly to the necessary person.**



# PUBLIC RECORDS

## When it is NOT a Public Record

- If the record that is NOT a public record is requested, the record must not be disposed of for a period of 30 days after the request was made

# PUBLIC RECORDS

## What is an Exempt Public Record

- An exempt public record is a public record (or portion of a public record) that is exempted from public release by Florida Statute
- Over 1,000 exemptions in Florida Statutes and more created each year
- Responsibility of records custodian to remove exempt public record (or portion thereof) before public release (i.e., redact exempt information)
- If reasonable concerns exist over information to be released, exemption may apply
- Exemptions may be waived by the exemption holder

# PUBLIC RECORDS

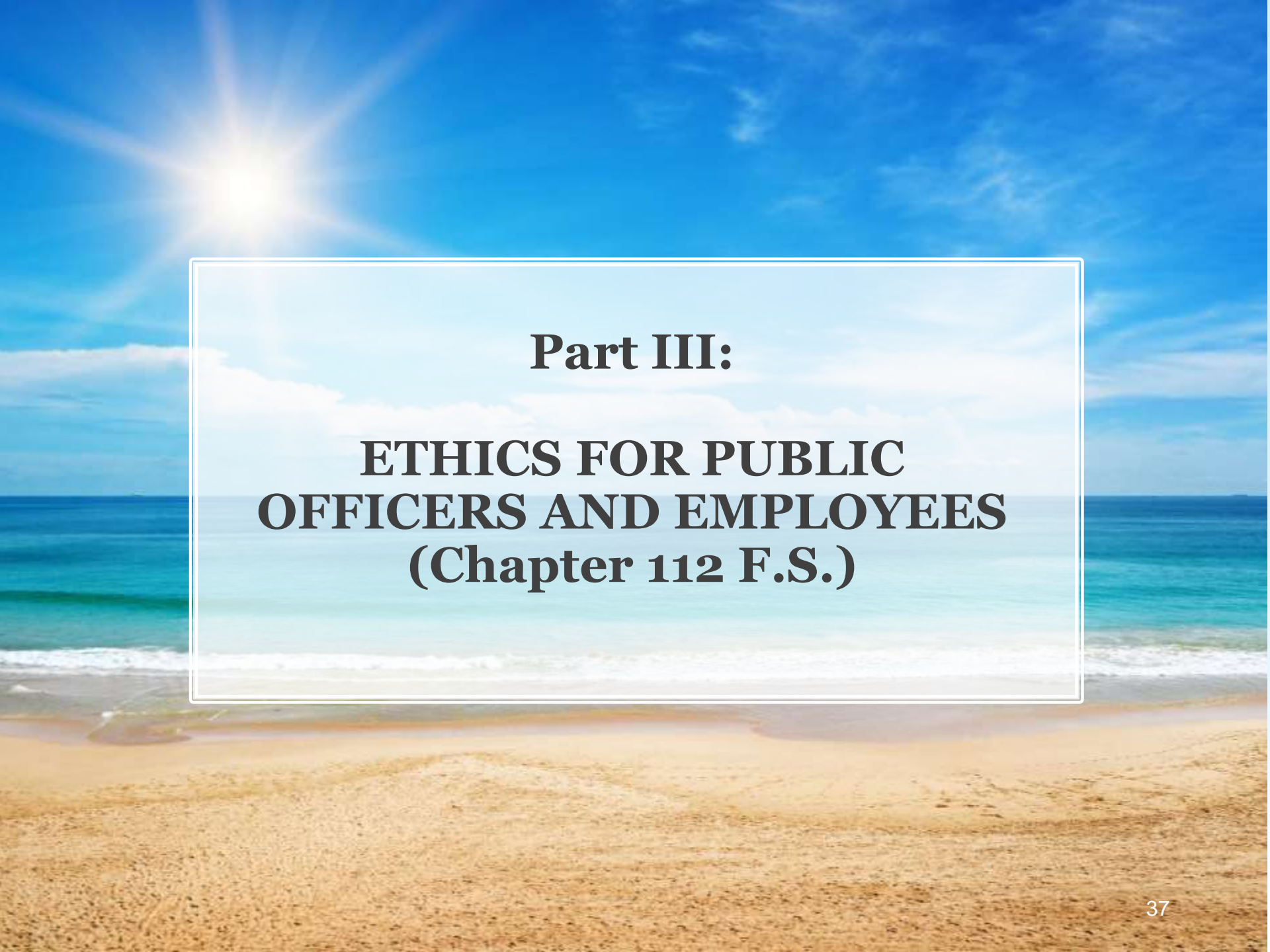
## What is a Confidential Public Record

- A confidential public record is a public record (or portion of a public record) that is exempted from public release by Florida Statute and made confidential
- Confidential information cannot be released unless authorized by statute (or other legal process)
- Confidentiality may not be waived
- Knowing release of confidential information may be misdemeanor

# PUBLIC RECORDS

## Helpful Links

- Research on Public Records:
  - Florida Attorney General's office website:
    - [www.myfloridalegal.com](http://www.myfloridalegal.com)
    - Searchable data-base of opinions
  - GOVERNMENT-IN-THE-SUNSHINE-MANUAL
    - Available for purchase from First Amendment Foundation
    - Copy available at Florida Attorney General's website under Open Government page
    - Covers almost all public records issues and exemptions
    - Also covers related Sunshine Law issues



**Part III:**

**ETHICS FOR PUBLIC  
OFFICERS AND EMPLOYEES  
(Chapter 112 F.S.)**

# Topics To Be Covered

- Legislative intent behind Florida's Code of Ethics
- Solicitation or acceptance of gifts and unauthorized compensation
- Doing business with one's agency
- Misuse of public position
- Conflicting employment or contractual relationships
- Disclosure or use of certain information
- Voting conflicts
- Additional Resources

# Legislative Intent of Code of Ethics

“Essentially, it is about **using an office** or a position **to benefit yourself** in a manner that would **not be possible without** the use of **that office.**”

Florida League of Cities' *Quality Cities – March/April 2011* “Ethical Behavior in Office: Know the Law, Trust your Conscience” (p. 34) by Attorney John Hubbard.

# Legislative Intent (cont'd)

## Section 112.311, Florida Statutes (excerpts):

- “It is essential to the proper conduct and operation of government that public officials be independent and impartial and that public office not be used for private gain other than the remuneration provided by law.”
- “...public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public...”
- “Such officers and employees are bound to observe, in their official acts, the highest standards of ethics..., recognizing that promoting the public interest and maintaining the respect of the people in their government must be of foremost concern.”



# Solicitation or Acceptance of Gifts

Do not solicit or accept anything of value in exchange for any vote, official action or judgment.

Section 112.313(2), Florida Statutes:

No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.

# Unauthorized Compensation

**Do not accept any compensation intended to influence your vote or other official action.**

Section 112.313(4):

No public officer, employee of an agency, local government or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.

# Solicitation of Gifts

Do not solicit any gift from a vendor, political committee or lobbyist.

Section 112.3148(3), Florida Statutes:

A reporting individual...is prohibited from soliciting any gift from a vendor doing business with the reporting individual's...agency, a political committee as defined in s. 106.11, or a lobbyist who lobbies the reporting individual's...agency, or the partner, firm, employer, or principal of such lobbyist, where such gift is for the personal benefit of the reporting individual..., another reporting individual..., or any member of the immediate family of a reporting individual..."

# Solicitation of Gifts (cont'd)

- ▶ For the purposes of this the restriction, “**immediate family**” means any parent, spouse, child or sibling.
- ▶ A “**reporting individual**” is any individual, including a candidate upon qualifying, who is required to file full or limited public disclosure of his or her financial interests, including, but not limited to, any person elected to office in any political subdivision or person appointed to any governing body, community or junior college board of trustees, code enforcement board, zoning board, pension board, as well as a mayor, manager, attorney, finance director, building inspector, police chief, fire chief, and environmental control director of any county or municipality.

# Prohibited Receipt of Gifts

Do not accept any gifts over \$100 from a vendor, political committee or lobbyist.

Section 112.3148(4), Florida Statutes:

A reporting individual...or any other person on his or her behalf is prohibited from accepting, directly or indirectly, a gift from a vendor doing business with the reporting individual's...agency, a political committee..., or a lobbyist who lobbies the reporting individual's...agency, or directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he or she knows or reasonably believes that the gift has a value in excess of \$100; however, such a gift may be accepted by such person on behalf of a governmental entity or a charitable organization...

# Value of Gifts

- “The **value** of a gift provided to a reporting individual...shall be determined using **actual cost to the donor, less taxes and gratuities**, except as otherwise provided in this subsection...” Sec. 112.3148(7)(a), Fla. Stat.
- “**Compensation** provided **by the donee** to the donor, if provided **within 90 days** after receipt of the gift, shall be **deducted from** the **value** of the gift in determining the value of the gift.” Sec. 112.3148(7)(b), Fla. Stat.

# Reporting of Gifts

All persons required to file financial disclosure and state procurement employees and who receive a gift that is not prohibited and worth more than \$100.00 must file a Form 9, Quarterly Gift Disclosure, with the Commission on Ethics no later than the last day of a calendar quarter following the quarter in which the gift was received. Gifts from relatives are not reported on Form 9 and the form does not need to be filed if no gift was received during the calendar quarter.

# Honoraria

Section 112.3149, Florida Statutes, governs the solicitation and disclosure of **honoraria**.

An honorarium means a payment of money or anything of value, directly or indirectly, as consideration for a speech or other oral presentation or for anything other than a book which has been published or intended to published.

*An honorarium does not include any ordinary payment or salary related to one's public duties, a reported campaign contribution, or the payment or provision of actual or reasonable transportation, lodging, and food and beverage expenses related to an honorarium event, including any registration fee.*



# Honoraria (cont'd)

A person who is required to file financial disclosure or who is a procurement employee for the state is prohibited from:

- ▶ **Soliciting** an honorarium which is related to his or her official public duties.
- ▶ Knowingly **accepting** an honorarium for a political committee or lobbyist who has lobbied his agency within the past 12 months or from a partner, firm, employer or principal of such lobbyist.
- ▶ Knowingly **accepting** an honorarium from a vendor (a business entity doing business directly with an agency, such as renting, leasing or selling any realty, goods or services)

# Doing Business with One's Agency

Do not do business with your agency.

Section 112.313(3), Florida Statutes:

No... public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the officer...or the officer's...spouse or child is an officer, partner, director, or proprietor or in which such officer...or the officer's....spouse or child, or any combination of them, has a material interest.

Material interest means direct or indirect ownership of more than five (5) percent of the total assets or capital stock of any business entity.

# Doing Business with One's Agency (cont'd)

Nor shall a public officer..., acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer's...own agency,...This subsection shall not affect or be construed to prohibit contracts entered into prior to:

- (a) October 1, 1975.
- (b) Qualification for elective office.
- (c) Appointment to public office.
- (d) Beginning public employment.

# Conflicting Employment or Contractual Relationship

Do not enter into employment or a contract with any entity that is regulated by or doing business with your agency.

Section 112.313(7), Florida Statutes:

(a) 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 or she is an officer or employee, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state...

## Conflicting Employment or Contractual Relationship (cont'd)

...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 or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.

# Exemptions for Subsections (3) and (7)

Section 112.313(12), Florida Statutes:

- Requirements for persons serving on advisory boards may be waived by an affirmative vote of two-thirds of the appointing body upon full disclosure of the transaction or relationship.
- Emergency purchases to protect health, safety or welfare of citizens.
- Purchase/sale is for legal advertising in a newspaper.
- Bank serves as depository of funds and officer has not favored this bank over others.
- Business entity is the only source of supply.
- Total amount of transactions does not exceed \$500.00 per calendar year.

# Exemptions (cont'd)

Other exemptions from subsection (3) and subsection (7) include but are not limited to:

- Business is conducted under rotation system among all qualified suppliers.
- Business is awarded through sealed, competitive bidding to the lowest or best bidder and:
  - Neither official or his or her spouse or child has participated in bid specs or determination of lowest or best bidder;
  - Neither official or his or her spouse or child has used or attempted to use official's influence to persuade agency; and
  - Official filed statement with SOE disclosing interest prior to or at the time of submission of bid.

## Additional Considerations (Prohibited Employment and Business Relationships)

- ▶ A public employee is prohibited from being a member of the governing body which serves as his or her employer. ( § 112.313(10), Fla. Stat.)
- ▶ **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. ( § 112.313(16), Fla. Stat.)



# Misuse of Public Position

Do not use your official position to secure special privileges for yourself or others.

Section 112.313(6), Florida Statutes:

No public officer, employee of an agency, or local government attorney shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others...

Corruptly means done with wrongful intent or resulting from some act or omission of a public servant which is inconsistent with his or her public duties

# Disclosure or Use of Certain Information

Do not use information gained from your official position (and not generally known to the public) for your or another's personal gain.

Section 112.313(8), Florida Statutes:

A current or former public officer, employee of an agency, or local government attorney may not disclose or use information not available to members of the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

# Voting Conflicts

Do not vote on any item that will provide you or someone connected to you a special private gain or loss.

Section 112.3143(3)(a), Florida Statutes:

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; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer.

# Voting Conflicts (cont'd)

- A special private gain or loss is defined as “an economic benefit or harm that would inure to the officer, his or her relative, business associate, or principal...”
- “Relative” is defined as “father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.”

# Voting Conflicts (cont'd)

- Whether a gain or loss is a “special, private” gain or loss is typically interpreted by the size of the affected class.
- Class > 100 = no conflict
- Class < 100 = conflict
- *For example, the COE determined that a municipal council member could vote on the alignment of a proposed road project where he was one of 385 affected property owners. CEO 91-18*

# Voting Conflicts (cont'd)

**Remote and speculative test:** At the time of the vote, is the officer's **potential gain or loss uncertain**? If it is uncertain, there is no “special private gain or loss” and no conflict exists.

*For example, in CEO 88-31, the Commission determined that a city council member was not prohibited from voting on the annexation of property which adjoined property in which she owned an interest because it was unclear what effect the proposed development of the property would have on the council member's property.*

# Voting Conflicts (cont'd)

Make sure you state your interest; abstain from voting; and file proper form within 15 days.

Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

Note: While elected officers (unlike appointed officers) *may* participate in the discussion, such participation is strongly discouraged and often prohibited by local ethics codes.

# Restriction on Employment of Relatives

Section 112.3135(1)(d), Florida Statutes:

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



# Restriction on Employment of Relatives (cont'd)

Do not appoint, employ, promote or advocate for one of your relatives within your agency.

Section 112.3135(2)(a), Florida Statutes:

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

Mere approval of budgets shall not be sufficient to constitute “jurisdiction or control” for purposes of this prohibition. Section 112.3135(2)(b), Fla. Stat.

## Restriction on Employment of Relatives (cont'd)

This restriction does not apply to:

- “appointments to boards other than those with land-planning or zoning responsibilities in those municipalities with less than 35,000 population.”
- “persons serving in a volunteer capacity who provide emergency medical, firefighting, or police services.”

# Post Office Holding and Employment (Revolving Door) Restrictions

- 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. (§ 112.313(13) and (14), Fla. Stat.)

# Penalties for Violations of Code of Ethics

Penalties for a public officer's violation of the various Ethics Laws include, but are not limited to:

- Impeachment
- Removal from office or employment
- Suspension
- Public censure and reprimand
- A civil penalty not to exceed \$10,000
- Restitution of any pecuniary benefits received because of the violation committed

# Penalties (cont'd)

**Candidates** found in violation may be subject to:

- ▶ Disqualification from being on the ballot,
- ▶ Public censure and reprimand,
- ▶ Civil penalty not to exceed \$10,000, and
- ▶ Triple the value of a gift received from a political committee.

**Former public officers or employees** found in violation may be subject to:

- ▶ Public censure and reprimand,
- ▶ Civil penalty not to exceed \$10,000,
- ▶ Restitution of pecuniary benefits; and
- ▶ Triple the value of a gift received from a political committee.

# Penalties (cont'd)

**Felony convictions:** 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, including: 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. ( § 112.3172, Fla. Stat.)

## **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 \$25.00 per day for each day late the form is filed, up to a maximum penalty of \$1,500.00.

# When in doubt – Ask!

When in doubt as to whether certain conduct or actions violate the Code of Ethics, contact your agency attorney or request an informal or formal advisory opinion from the State Commission on Ethics (or from your local Ethics Commission if subject to a locally adopted code).

# “General Rules”

1. If you think it might be wrong, it probably is.
2. Don't get yourself into a situation that “tempts to dishonor.”
3. Is there anyone who gives you something who doesn't want or expect something in return, except your mother? (And you can't be sure about her.)
4. People don't give elected officials or government employees gifts because they like them, but because they want something – at best, it is a sense of obligation.
5. Can you accept a gift that does not influence you?



# Additional Resources

- Commission on Ethics opinions at: <http://www.ethics.state.fl.us/>
- Ch. 112, Part III, Florida Statutes
- Criminal Statutes (e.g., Chs. 838 & 839, Fla. Stat.)
- Florida Constitution, Article 2, Section 8
- Florida League of Cities' *Quality Cities – March/April 2011* “Ethical Behavior in Office: Know the Law, Trust your Conscience” by Attorney John Hubbard at:  
<http://www.floridaleagueofcities.com/Assets/Files/ethicalbehaviorinoffice.pdf>

# THANK YOU!

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