



*An Overview for Florida's  
Early Learning Advisory Council*

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Government in the Sunshine Laws:



**SUNSHINE LAW  
PUBLIC RECORDS ACT  
CODE OF ETHICS**

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# *SUNSHINE LAW SOURCES*

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- \* *Florida Constitution,  
Article I, sec. 24(b)*
  - \* *Florida Statutes, sec. 286.011*
  - \* **An excellent resource:**  
*Government-in-the-Sunshine  
Manual: See*  
[www.myfloridalegal.com/sunshine](http://www.myfloridalegal.com/sunshine)



# *Are Advisory Bodies Subject to the Sunshine Law?*

Case law:

- “The Sunshine Law equally binds all members of governmental bodies, be they advisory committee members or elected officials”
- “Advisory boards created pursuant to law...or otherwise established by public agencies are subject to the Sunshine Law, even though their recommendations are not binding upon the entities that create them.”





## *What are the requirements of the Sunshine Law? [s.286.011, F.S.]*

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- **Meetings** of public boards or commissions must be **open to the public**;
- **Reasonable notice** of such meetings must be given; and
- **Minutes** of the meetings must be promptly **taken and open to public inspection**



# *What constitutes a meeting?*

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1. **Two** or more **members**
2. Of the **same** public “entity”
3. Discussing matters that **are** before the Board or **foreseeably may be** before the Board
4. Applies to **formal** meetings (even in absence of a quorum) and **informal** encounters/discussions





# *What are some examples of different forms of “meetings”?*

- **Telephone calls** (not merely conference calls)
- Written **correspondence** to/between Board members:
- **E-mails** and other computer correspondence
- Delegating authority to an “alter ego”
- Communicating through a liaison
  
- Generally, for all of the above:
  - Reporting of facts/no response-NOT A MEETING
  - Response to report-YES, IS A MEETING
  - Solicitation of ideas or responses-YES, IS A MEETING
  - Discussions, deliberations, official business-YES, IS A MEETING



## *Social Events and the Sunshine Law*

- Members of a public board or commission are not prohibited under the Sunshine Law from meeting together socially, provided that matters which may come before the board or commission are not discussed at such gatherings.
- Thus, when two or more members of a public board 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 the board.**



## *What kind of notice of the meeting must be given?*

- **Reasonable notice** is required for all meetings subject to the Sunshine law.
- The **type of notice** that must be given is **variable**, depending on the facts of the situation and the board involved. In some instances, posting of the notice in an area set aside for that purpose may be sufficient; in others, publication in a local newspaper may be necessary. In each case, however, **notice must be given at such time and in such a manner as will enable the media and the general public to attend the meeting.**







## *What should be included in the notice?*

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The notice should contain the time and place of the meeting and, if available, an agenda (or if no agenda is available, subject matter summations might be used);



## *Does the Sunshine Law limit where meetings may be held?*

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- Public access to meetings of public boards or commissions is the key element of the Sunshine Law
- Public agencies are advised to avoid holding meetings in places not easily accessible to the public.





# *Can restrictions be placed on the public's attendance at, or participation in, a public meeting?*

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- The term “open to the public” as used in the Sunshine Law means open to *all* persons who choose to attend.



- **However**, in providing an opportunity for public participation, reasonable rules and policies, which ensure the orderly conduct of a public meeting and which require orderly behavior on the part of those persons attending, may be adopted by a public board.





# *What are the requirements for minutes?*



- Generally, a written summary of events occurring at the meeting.
- Minutes must be open to public inspection within reasonable time.
- Need not record every detail of the meeting.
- If meeting is recorded, the transcription of the recording can be the minutes.
- If meeting is recorded, the recording becomes a public record and subject to Public Records retention law.



## *What are the consequences of Sunshine Law violations?*

- “no resolution, rule or formal action shall be considered binding” Section 286.011(1), F.S.
- actions taken in violation of Sunshine Law **void** *ab initio* (from the beginning)
- “intent” to violate law not required
- violation “cured” only by full open meeting
- “perfunctory” ratification insufficient





## *What are the personal consequences of Sunshine Law violations?*

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- “*knowingly*” violating the law is punishable by 60 days jail and/or fine up to \$500



- suspension and/or removal from office



- noncriminal fine up to \$500
- payment of attorney fees



## *PUBLIC RECORDS*

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Art I, Sec 24(a); Chapter 119, F.S.:  
State policy is that “public records”  
shall be open for inspection by any  
person.



*Florida's Early Learning Advisory  
Council is Subject to Public Records  
Law Due to Being within AWI*

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Sec. 1002.77, F.S.:

“There is created the Florida  
Early Learning Advisory Counsel  
within the Agency for Workforce  
Innovation.”







# *Public Records are not limited to traditional documents*

Section 119.011(11), Florida Statutes, defines “public records” to include: all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.





# What is a public record?



Florida Supreme Court: the definition of public records encompasses **all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.**

All such materials, **regardless of whether they are in final form,** are open for public inspection unless the Legislature has exempted them from disclosure.



# *Computer Records*



- Information stored in a public agency's computer "is as much a public record as a written page in a book or a tabulation in a file stored in a filing cabinet..."
- Information such as electronic calendars, databases, and word processing files stored in agency computers, can all constitute public records.



# *Public's Right of Access*

Section 119.07(1)(a), Florida Statutes, establishes a right of access to public records in plain and unequivocal terms:

“Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records. A custodian of public records may not impose a rule or condition of inspection which operated to restrict or circumvent a person's right to access.”





# *How can an agency limit inspection and copying of public records?*

Agency's restrictions limited to:

- Reasonable notice, time, and conditions
- Under Supervision of Record Custodian
- Payment Of Actual Costs
  - Inspection Costs—When “extensive” assistance needed
  - Copying Costs—Statutory fees
- Numerous specific exemptions exist to the Public Records Act (SSN, medical info, bank account/credit card numbers, *etc.*)
- Seek legal advice – (All public records requests at AWI go to General Counsel's Office)



## *How long must an agency retain a public record?*

Section 119.021(2)(a), F.S., requires the Department of State to adopt rules establishing retention schedules and a disposal process for public records. Each agency must comply with these rules.

(Thus, depends on the type of record! – normally, at a minimum, general correspondence must be kept for 3 years)





# *Public Records Penalties*





- Noncriminal infraction: \$500 fine
- Criminal (for a knowing violation): A public officer is subject to suspension and removal or impeachment and is guilty of a misdemeanor of the first degree, punishable by one year in prison, or \$1,000 fine, or both.





# *Florida Code of Ethics*

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Each member of Florida's Early Learning Advisory Council is subject to the ethics provisions in part III of chapter 112.

(Sec. 1002.77(4)(b), F.S.)





# *CODE OF ETHICS*

- Chapter 112, F.S.: “The public interest requires that the law **protect against any conflict of interest** and establish **standards for the conduct** of elected officials and government employees in situations where conflicts may exist. ... Such officers and employees are bound to observe, in their official acts, **the highest standards of ethics ....**”
- Art. II, Sec. 15 of FL Const.:  
    **“A public office is a public trust.”**
- **Goal: Avoidance of not only improprieties, but the appearance of impropriety**



# *CODE OF ETHICS – A Common Sense Approach*

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- **Newspaper Test:** Would you want to have your action reported on the front page of the newspaper for all (to include your mother) to see what you did?
- If not, then what you're thinking of doing probably is unethical!





# *PROHIBITED CONDUCT*

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- Solicitation and Acceptance of Gifts
- Unauthorized Compensation
- Misuse of Public Position
- Disclosure or Use of Certain Information
- Conflicting Employment or Contractual Relationships
- Nondisclosure of voting conflicts





# *SOLICITATION OR ACCEPTANCE OF GIFTS*

- You are prohibited from soliciting or accepting anything of value – including a gift, loan, reward, promise of future employment, favor, or service – based upon any understanding that your vote, official action, or judgment would be influenced thereby.





# *UNAUTHORIZED COMPENSATION*

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- You, as well as your spouse and minor children, are prohibited from accepting any compensation, payment, or thing of value when you know, or with the exercise of reasonable care should know, that it is given to influence a vote or other action in which you are expected to participate in your capacity.





## *MISUSE OF PUBLIC POSITION*

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- You may not corruptly use or attempt to use your official position or any other property or resource within your trust to secure a special privilege, benefit, or exemption for yourselves or someone else.





# *DISCLOSURE OR USE OF CERTAIN INFORMATION*

*[Sec. 112.313(8), F.S.]*

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- You are prohibited from disclosing or using information not available to members of the general public and gained by reason of your official position for your personal gain or benefit or for the personal gain or benefit of any other person or business entity.





# *CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIPS*

*[Sec.112.313(7), F.S.]*

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- You are generally prohibited from holding any employment or contract with any business entity or agency regulated by or doing business with your public agency.
- You are generally not to have any relationships which will pose a frequently recurring conflict between your private and public interests.







# *VOTING CONFLICTS*

*[Sec. 112.3143, F.S.]*

- A **voting conflict arises** when you are called upon to vote on any measure which would inure to your special private gain or loss; which you know would inure to the special private gain or loss of any principal by whom you are retained or to the parent organization or subsidiary of a corporate principal by which you are retained (other than a governmental agency); or which you know would inure to the special private loss or gain of your relative or business associate.





# *STATE PUBLIC OFFICER = YOU!*

*[Sec. 112.3143(2), F.S.]*

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This slide addresses only voting, not participation before the vote:

- No state public officer is prohibited from voting on any matter.
- However, any state officer who votes on a measure that presents him or her with a voting conflict shall, 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. (*See Ethics Commission Form 8A*)



# PARTICIPATION BY APPOINTED PUBLIC OFFICERS

[Sec. 112.3143(4), F.S.]

- The **definition of “participate”** is “any attempt to influence the decision by order or written communication, whether made by the officer or at the officer’s direction.”
- State *appointed* public officers cannot participate in any matter in which they have a voting conflict without first disclosing the nature of their interest in the matter.
- If you do not intend to “participate” in the measure, you may vote and follow up with the written memo within 15 days. If you *do* intend to “participate,” you must make your disclosure before you participate and also file a written memo within 15 days.





# *DISCLOSURE OF FINANCIAL INTERESTS*

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- Part III of chapter 112, F.S., contains an exemption for members of advisory boards in filing financial disclosure forms.
- Unlike other state officers, members of advisory boards (with a budget of no more than \$100K) are not required to file financial disclosure statements. Therefore, at present, members of Florida's Early Learning Advisory Council are not required to file financial disclosure statements.





## *Penalties for Violations of the Ethics Code (sec. 112.317, F.S.)*

- Removal/suspension from office
- Public censure/reprimand
- Restitution of any pecuniary benefits received due to the violation
- Civil penalty of up to \$10,000
- Forfeiture of 1/3 salary per month for 12 months.





# *ADVISORY OPINIONS -- Better Safe than Sorry!*



- The Florida Commission on Ethics issues opinions about how the ethics code applies in particular circumstances.
- Advisory opinions can be requested (in writing) when you have a question regarding the applicability of the ethics law to you and your situation.
- Contact the Ethics Commission at:  
[www.ethics.state.fl.us](http://www.ethics.state.fl.us)  
(850) 488-7864



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# *QUESTIONS?*

