Sunshine Law, Public Records & Ethics for Public Officers and Public Employees 2018

COURSE CLASSIFICATION: INTERMEDIATE LEVEL

April 13, 2018
Live Presentations and Webcast:
Rosen Plaza Hotel
9700 International Drive • Orlando, FL 32919

Course No. 2603R
Are you getting the most from your
Member Benefits?

Practice Resources

- Citrix
- Clio
- Corporate Creations
- CosmoLex
- The Florida Bar CLE
- eFile
- Juris.co
- Lawyers Advising Lawyers
- LawCountability
- Logikcull
- mycase
- netdocuments
- Nextpoint
- Practice Panther
- PRI
- RightSignature
- Rocket Matter
- RPost
- Ruby
- Serve Manager
- ShareFile
- Start Your Own Firm
- The Law TV
Insurance

Visit www.floridabar.org/memberbenefits for a complete list of member benefits

Travel

Retail

Visit www.floridabar.org/memberbenefits for a complete list of member benefits
Asset Protection in Florida
FIFTH EDITION © 2017

Asset Protection in Florida covers all facets of asset preservation for Florida residents. The manual provides comprehensive analysis of the many steps available to protect assets from creditors’ claims, both pre- and post-mortem.

Among the many topics covered are homestead, trusts (both domestic and offshore), business planning, planning for dissolution of marriage, protection of retirement and education accounts, and the ethical aspects of advising clients on asset protection issues. Bankruptcy issues and tax planning are prominently featured throughout the text. Highlights of the Fifth Edition include new discussion of:

- Revocable trusts
- LLC membership interests
- Beneficiaries of annuities

$195
Hardbound, Pub. #22680, ISBN 9781522139553
eISBN 9781522139560

Florida Civil Practice Before Trial
TWELFTH EDITION © 2017

Florida Civil Practice Before Trial walks you through the procedural steps necessary to prepare a case for trial. The popular reference includes recent significant changes made by case law, statutes, and rules amendments. Highlights of the Twelfth Edition include updated discussion of:

- Delayed discovery and due diligence
- Amount in controversy requirements
- Default judgments

Florida Civil Practice Before Trial is also the perfect complement to another Florida Bar title, Florida Civil Trial Practice.

$262
Hardbound, Pub. #22924, ISBN 9781522137146
eISBN 9781522137153
Practice Under Florida Probate Code
NINTH EDITION © 2017

Written by skilled probate attorneys, *Practice Under Florida Probate Code* provides comprehensive analysis of all the steps you need to take to administer an estate in Florida. Forms, sample accountings, and charts for basic probate practice enhance the book’s practical utility. Includes discussion of new revised statutory provisions and rules related to:

- Florida Electronic Wills Act
- Florida Fiduciary Access to Digital Assets Act
- Elective share laws
- Apportionment of estate taxes
- Duty of the personal representative to resign
- Extension of deadline for objections to validity of will, venue, or jurisdiction

New case law discussions relate to:

- Ethical resolution when client designates drafting attorney as personal representative
- Disgorgement and surcharge against attorneys and personal representatives
- How to effect spouse’s valid waiver of homestead rights
- Dependent relative revocation
- Formal and informal notice and in personam jurisdiction

$302
Hardbound, Pub. #22811, ISBN 9781522139287
eISBN 9781522139294

Florida Standard Jury Instructions in Criminal Cases with 2017 Supplement
EIGHTH EDITION © 2015

This title is an authoritative collection of instructions for virtually every criminal offense. It features the latest significant amendments and new instructions including:

- 2.1(d) Insanity—Psychotropic Medication
- 8.23 Extortion
- 8.25 Violation of a Condition of Pretrial Release from a Domestic Violence Charge
- 11.20 Transmission of Child Pornography by Electronic Device or Equipment
- 11.21 Transmission of Material Harmful to Minors by Electronic Device or Equipment
- 15.5 Resisting Recovery of Stolen Property
- 29.15(a) Unlawful Protests

The 2017 update includes the changes and additions to the Instructions published through April 27, 2017.

$128
Loose-leaf, supplemented annually, Pub. #22856, ISBN 9781632822710
eISBN 9781632822727

Florida Standard Jury Instructions in Civil Cases with 2017 Supplement
THIRD EDITION © 2015

The 2017 Supplement offers current revisions to the massive update of the instructions. The handy loose-leaf includes:

- The reorganization and renumbering of the substantive areas into separate sections that incorporate pertinent standard instructions tailored to that specific area of the law
- Implementation of “plain English” terminology to improve juror understanding
- Reordering of the timing and sequencing of instructions during the trial process to improve communication to the jurors
- Revision of the Notes on Use to improve currency, eliminate outdated references, clarify the points being made, and point out areas where the committee has not taken a position

The 2017 Supplement updates the instructions, incorporating the revisions and corrections that have been made through 2017, including the addition of a new section 417, Unlawful Discrimination.

$167
Loose-leaf, supplemented annually, Pub. #22838, ISBN 9781632843852
eISBN 9781632843869
<table>
<thead>
<tr>
<th>ADMIRALTY LAW</th>
<th>PUB. #</th>
<th>ISBN</th>
<th>eISBN</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Florida Maritime Law and Practice, 5th Ed. (2017)</td>
<td>22897</td>
<td>9781522132356</td>
<td>9781522132363</td>
<td>$170</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>BUSINESS LAW</th>
<th>PUB. #</th>
<th>ISBN</th>
<th>eISBN</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Litigation in Florida, 9th Ed. (2017)</td>
<td>22775</td>
<td>9781522123538</td>
<td>9781522123545</td>
<td>$262</td>
</tr>
<tr>
<td>Creditors’ and Debtors’ Practice in Florida, 6th Ed. (2017)</td>
<td>22802</td>
<td>9781522134985</td>
<td>9781522134992</td>
<td>$195</td>
</tr>
<tr>
<td>Florida Small Business Practice, 9th Ed. (2016)</td>
<td>22826</td>
<td>9781632845870</td>
<td>9781632845887</td>
<td>$302</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ESTATE PLANNING AND ADMINISTRATION</th>
<th>PUB. #</th>
<th>ISBN</th>
<th>eISBN</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration of Trusts in Florida, 9th Ed. (2017)</td>
<td>22748</td>
<td>9781522117414</td>
<td>9781522117421</td>
<td>$235</td>
</tr>
<tr>
<td>Asset Protection in Florida, 5th Ed. (2017)</td>
<td>22680</td>
<td>9781522139553</td>
<td>9781522139560</td>
<td>$195</td>
</tr>
<tr>
<td>Basic Estate Planning in Florida, 8th Ed. (2014)</td>
<td>22694</td>
<td>9781632815767</td>
<td>9781632815774</td>
<td>$195</td>
</tr>
<tr>
<td>Florida Guardianship Practice, 9th Ed. (2016)</td>
<td>22829</td>
<td>9781522117841</td>
<td>9781522117858</td>
<td>$235</td>
</tr>
<tr>
<td>Kane’s Florida Will and Trust Forms Manual &amp; Automated Forms Version Combo</td>
<td>22877</td>
<td>9781422454626</td>
<td>n/a</td>
<td>$1,069</td>
</tr>
<tr>
<td>Kane’s Florida Will and Trust Manual, 4th Ed. with Deskbook, 2016 Ed.</td>
<td>22877</td>
<td>97802057853</td>
<td>9780327132099</td>
<td>$749</td>
</tr>
<tr>
<td>Kane’s Florida Will and Trust Deskbook, 2017 Ed.</td>
<td>22877</td>
<td>9781522145837</td>
<td>n/a</td>
<td>$266</td>
</tr>
<tr>
<td>Kane’s Florida Will and Trust Forms Manual Automated Forms CD-ROM, 2017 Ed.</td>
<td>22877</td>
<td>9781522149767</td>
<td>n/a</td>
<td>$767</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FAMILY LAW (see also TRIAL PRACTICE)</th>
<th>PUB. #</th>
<th>ISBN</th>
<th>eISBN</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoption, Paternity, and Other Florida Family Practice, 12th Ed. (2017)</td>
<td>22868</td>
<td>9781522136491</td>
<td>9781522136507</td>
<td>$195</td>
</tr>
<tr>
<td>Drafting Marriage Contracts in Florida, 11th Ed. (2016)</td>
<td>22823</td>
<td>9781522139560</td>
<td>9781522139578</td>
<td>$195</td>
</tr>
<tr>
<td>Florida Dissolution of Marriage, 12th Ed. (2015)</td>
<td>22865</td>
<td>9781632816849</td>
<td>9781632816856</td>
<td>$302</td>
</tr>
<tr>
<td>Florida Juvenile Law and Practice, 14th Ed. (2016)</td>
<td>22808</td>
<td>9781632845818</td>
<td>9781632845825</td>
<td>$181</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>JURY INSTRUCTIONS</th>
<th>PUB. #</th>
<th>ISBN</th>
<th>eISBN</th>
<th>PRICE</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>REAL PROPERTY LAW</th>
<th>PUB. #</th>
<th>ISBN</th>
<th>eISBN</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Florida Construction Law and Practice, 8th Ed. (2016)</td>
<td>22820</td>
<td>97816328636410</td>
<td>97816328636427</td>
<td>$235</td>
</tr>
<tr>
<td>Florida Eminent Domain Practice and Procedure, 10th Ed. (2017)</td>
<td>22900</td>
<td>9781522127420</td>
<td>9781522127437</td>
<td>$249</td>
</tr>
<tr>
<td>Florida Real Property Complex Transactions, 8th Ed. (2016)</td>
<td>22915</td>
<td>9781522112075</td>
<td>9781522112082</td>
<td>$316</td>
</tr>
<tr>
<td>Florida Real Property Litigation, 8th Ed. (2016)</td>
<td>22754</td>
<td>9781632846594</td>
<td>9781632846600</td>
<td>$262</td>
</tr>
<tr>
<td>Florida Real Property Sales Transactions, 8th Ed. (2015)</td>
<td>22918</td>
<td>9781632826190</td>
<td>9781632826206</td>
<td>$235</td>
</tr>
</tbody>
</table>
### REAL PROPERTY LAW (continued)

<table>
<thead>
<tr>
<th>Title</th>
<th>PUB. #</th>
<th>ISBN</th>
<th>eISBN</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Florida Real Property Title Examination and Insurance, 8th Ed. (2016)</td>
<td>22874</td>
<td>9781522121138</td>
<td>9781522121145</td>
<td>$235</td>
</tr>
</tbody>
</table>

### RULES OF PROCEDURE

<table>
<thead>
<tr>
<th>Title</th>
<th>PUB. #</th>
<th>ISBN</th>
<th>eISBN</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Florida Criminal, Traffic Court, Appellate Rules of Procedure, and Rules of Judicial Administration, 2018 Ed.</td>
<td>22835</td>
<td>9781522150305</td>
<td>9781522150312</td>
<td>$81</td>
</tr>
<tr>
<td>Florida Family Law (Rules and Statutes), and Rules of Judicial Administration, 2018 Ed.</td>
<td>22751</td>
<td>9781522130697</td>
<td>9781522148487</td>
<td>$128</td>
</tr>
<tr>
<td>Florida Probate Rules and Rules of Judicial Administration, 2017 Ed.</td>
<td>22736</td>
<td>9781522127888</td>
<td>9781522127895</td>
<td>$67</td>
</tr>
<tr>
<td>Florida Civil, Judicial, Small Claims, and Appellate Rules with Florida Evidence Code, 2017 Ed.</td>
<td>22728</td>
<td>9781522127901</td>
<td>9781522127918</td>
<td>$81</td>
</tr>
<tr>
<td>Florida Rules of Juvenile Procedure and Rules of Judicial Administration, 2017 Ed.</td>
<td>22763</td>
<td>9781522127925</td>
<td>9781522127932</td>
<td>$67</td>
</tr>
</tbody>
</table>

### TRIAL PRACTICE

<table>
<thead>
<tr>
<th>Title</th>
<th>PUB. #</th>
<th>ISBN</th>
<th>eISBN</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence in Florida, 10th Ed. (2014)</td>
<td>22832</td>
<td>9781632816245</td>
<td>9781632816252</td>
<td>$334</td>
</tr>
<tr>
<td>Florida Practitioner’s Guide™: Civil Trial Preparation, 8th Ed. (2017)</td>
<td>22830</td>
<td>9781522127826</td>
<td>9781522127833</td>
<td>$208</td>
</tr>
<tr>
<td>Florida Administrative Practice, 11th Ed. (2017)</td>
<td>22781</td>
<td>9781630437213</td>
<td>9781522128786</td>
<td>$235</td>
</tr>
<tr>
<td>Florida Appellate Practice, 10th Ed. (2017)</td>
<td>22817</td>
<td>9781522123552</td>
<td>9781522123569</td>
<td>$222</td>
</tr>
<tr>
<td>Florida Automobile Insurance Law, 9th Ed. (2014)</td>
<td>22784</td>
<td>9781630439941</td>
<td>9781630439958</td>
<td>$195</td>
</tr>
<tr>
<td>Florida Civil Practice Before Trial, 12th Ed. (2017) <strong>NEW EDITION</strong></td>
<td>22924</td>
<td>9781522137146</td>
<td>9781522137153</td>
<td>$262</td>
</tr>
<tr>
<td>Florida Civil Trial Practice, 11th Ed. (2017)</td>
<td>22787</td>
<td>9781522132332</td>
<td>9781522132349</td>
<td>$195</td>
</tr>
<tr>
<td>LexisNexis® Practice Guide: Florida e-Discovery and Evidence (2011)</td>
<td>01626</td>
<td>9781422478592</td>
<td>9781579118617</td>
<td>$249</td>
</tr>
</tbody>
</table>

### PRIMARY LAW

<table>
<thead>
<tr>
<th>Title</th>
<th>PUB. #</th>
<th>ISBN</th>
<th>eISBN</th>
<th>PRICE</th>
</tr>
</thead>
<tbody>
<tr>
<td>LexisNexis® Florida Annotated Statutes, The Florida Bar Edition (2011) <strong>Includes Updates!</strong></td>
<td>41070</td>
<td>9781422469705</td>
<td>n/a</td>
<td>$1,933</td>
</tr>
</tbody>
</table>

---

**Expanding your library with eBooks?**

**The eBook feature allows for in-browser reading!**

Make optimal use of your research time with LexisNexis publications for The Florida Bar in eBook format. Access our extensive list of titles from leading attorneys and authors—on your schedule and on the mobile device of your choice. Or, read your eBook in your web browser® on any mobile device without needing eReader software. For the latest listing of available titles, look for the eISBN designation listed in this brochure or go to [www.lexisnexis.com/flaebooks](http://www.lexisnexis.com/flaebooks).

---

**Prices do not reflect sales tax, shipping and handling. Prices current as of 1/1/2018. Prices subject to change without notice.**

*In-browser feature requires Internet Explorer® 11 or higher, Chrome™, Safari®, or Firefox®.*

To receive a 20% discount on future updates for these publications call 800.833.9844 and press 5 to become a subscriber under the Automatic Shipment Subscription Program and to obtain full terms and conditions for that program.

**Use of LexisNexis**

The Florida Bar acknowledges the use of the LexisNexis computerized legal research service to assist in the legal editing of its manuals and supplements. Members of The Florida Bar are eligible for special Bar member benefits. Call 866.836.8116 for more information.
Common Questions About CLER

1. What is CLER?
   CLER, or Continuing Legal Education Requirement, was adopted by the Supreme Court of Florida in 1988 and requires all members of The Florida Bar to continue their legal education.

2. What is the requirement?
   Over a 3 year period, each member must complete 33 hours, 5 of which are in the area of ethics, professionalism, substance abuse, or mental illness awareness, and 3 hours in technology.

3. Where may I find information on CLER?
   Rule 6-10 of the Rules Regulating The Florida Bar sets out the requirement. All the rules may be found at www.floridabar.org/rules.

4. Who administers the CLER program?
   Day-to-day administration is the responsibility of the Legal Specialization and Education Department of The Florida Bar. The program is directly supervised by the Board of Legal Specialization and Education (BLSE) and all policy decisions must ultimately be approved by the Board of Governors.

5. How often and by when do I need to report compliance?
   Members are required to report CLE hours earned every three years. Each member is assigned a three year reporting cycle. You may find your reporting date by logging in to your member portal at member.floridabar.org.

6. Will I receive notice advising me that my reporting period is upcoming?
   Four months prior to the end of your reporting cycle, you will receive a CLER Reporting Affidavit, if you still lack hours.

7. What happens if I am late or do not complete the required hours?
   You run the risk of being deemed a delinquent member which prohibits you from engaging in the practice of Florida law.

8. Will I receive any other information about my reporting cycle?
   Yes, you will receive reminders prior to the end of your reporting cycle, if you have not yet completed your hours.

9. Are there any exemptions from CLER?
   Rule 6-10.3(c) lists all valid exemptions. They are:
   1) Active military service
   2) Undue hardship (upon approval by the BLSE)
   3) Nonresident membership (see rule for details)
   4) Full-time federal judiciary
   5) Justices of the Supreme Court of Florida and judges of district, circuit and county courts
   6) Inactive members of The Florida Bar
10. **Other than attending approved CLE courses, how may I earn credit hours?**

   Credit may be earned by:
   
   1) Lecturing at an approved CLE program
   2) Serving as a workshop leader or panel member
   3) Writing and publishing in a professional publication or journal
   4) Teaching (graduate law or law school courses)
   5) University attendance (graduate law or law school courses)

11. **How do I submit various activities for credit evaluation?**

    Applications for credit may be found on our website, www.floridabar.org.

12. **How are attendance hours posted on my CLER record?**

    You must post your credits online by logging in to your member portal at member.floridabar.org.

13. **How long does it take for hours to be posted to my CLER record?**

    When you post your CLE credit online, your record will be automatically updated and you will be able to see your current CLE hours and reporting period.

14. **How may I find information on programs sponsored by The Florida Bar?**

    You may wish to visit our website, www.floridabar.org/cle, or refer to The Florida Bar News. You may also call CLE Registrations at 850/561-5831.

15. **If I accumulate more than 30 hours, may I use the excess for my next reporting cycle?**

    Excess hours may not be carried forward. The standing policies of the BLSE, as approved by the Supreme Court of Florida specifically state in 6.03(b):
    
    ... CLER credit may not be counted for more than one reporting period and may not be carried forward to subsequent reporting periods.

16. **Will out-of-state CLE hours count toward CLER?**

    Courses approved by other state bars are generally acceptable for use toward satisfying CLER.

17. **If I have questions, whom do I call?**

    You may call the Legal Specialization and Education Department of The Florida Bar at 850/561-5842.

    **While online checking your CLER, don’t forget to check your Basic Skills Course Requirement status.**
PREFACE

The course materials in this booklet were prepared for use by the registrants attending our Continuing Legal Education course during the lectures and later in their offices.

The Florida Bar is indebted to the members of the Steering Committee, the lecturers and authors for their donations of time and talent, but does not have an official view of their work products.

**CLER CREDIT**  
(Maximum 8.0 hours)

General ............................................. 8.0 hours  
Ethics .................................................. 6.0 hours

**CERTIFICATION CREDIT**  
(Maximum 8.0 hours)

State & Federal Gov’t & Administrative Practice ......................................................... 8.0 hours

Seminar credit may be applied to satisfy both CLER and Board Certification requirements in the amounts specified above, not to exceed the maximum credit. Refer to Chapter 6, Rules Regulating The Florida Bar, see the CLE link at www.floridabar.org for more information about the CLER and Certification Requirements.

Prior to your CLER reporting date you will be sent a Reporting Affidavit (must be returned by your CLER reporting date). You are encouraged to maintain records of your CLE hours.

**CLE CREDIT IS NOT AWARDED FOR THE PURCHASE OF THE COURSE BOOK ONLY.**

**CLE COMMITTEE MISSION STATEMENT**

The mission of the Continuing Legal Education Committee is to assist the members of The Florida Bar in their continuing legal education and to facilitate the production and delivery of quality CLE programs and publications for the benefit of Bar members in coordination with the Sections, Committees and Staff of The Florida Bar and others who participate in the CLE process.

**COURSE CLASSIFICATION**

The Steering Committee for this course has determined its content to be INTERMEDIATE.
CITY, COUNTY and LOCAL GOVERNMENT LAW SECTION

Robert Teitler, Fort Lauderdale — Chair
Michele Lieberman, Gainesville — Chair-elect

FACULTY & STEERING COMMITTEE

C. “Chris” Christopher Anderson, III, Tallahassee
Betsy Daley, Tallahassee
Pat Gleason, Tallahassee
Caroline Klancke, Tallahassee
Andrew Lannon, Palm Bay
Gray Schafer, Tallahassee
Patricia D. Smith, Palm Bay

CLE COMMITTEE

Jenifer S. McCaffrey Lehner, Tampa — Chair
Terry L. Hill — Director, Programs Division

For a complete list of Member Services visit our web site at www.floridabar.org.
LECTURE PROGRAM

8:00 a.m. - 8:20 a.m.  Late Registration

8:20 a.m. - 8:30 a.m.  Introduction and Opening Remarks
   Robert Teitler, Chair

8:30 a.m. - 10:10 a.m.  2018 Open Government Update: Real World Cases on Florida's Sunshine and Public Records Laws
   Pat Gleason, Tallahassee

10:10 a.m. - 10:20 a.m.  Break

10:20 a.m. - 12:00 p.m.  A Local Government Practitioner's Guide to Understanding Ethics Laws and Navigating Your Clients Through Them In Stormy Seas
   Andrew Lannon, Palm Bay
   Patricia D. Smith, Palm Bay

12:00 p.m. - 1:00 p.m.  Lunch

1:00 p.m. - 1:50 p.m.  Act 1, Scene 1, The Ethics Complaint: Spotlight on Misuse and Nepotism
   Betsy Daley, Tallahassee

   Gray Schafer, Tallahassee

2:50 p.m. - 3:40 p.m.  (Ethics) Second Fiddles and Parachutes: Conflicting Business Relationships and Post-Public Service Restrictions
   C. “Chris” Christopher Anderson, III, Tallahassee

3:40 p.m. - 4:30 p.m.  (Ethics) Harmful Hospitality and Corrupting Cups of Coffee: Gifts, Honoraria and More
   Caroline Klancke, Tallahassee
TABLE OF CONTENTS

2018 OPEN GOVERNMENT UPDATE: REAL WORLD CASES ON FLORIDA'S SUNSHINE AND PUBLIC RECORDS LAWS
Pat Gleason, Tallahassee

I. Government in The Sunshine Law .................................................................1.1
II. Public Records ............................................................................................1.32

A LOCAL GOVERNMENT PRACTITIONER'S GUIDE TO UNDERSTANDING ETHICS LAWS AND NAVIGATING YOUR CLIENTS THROUGH THEM IN STORMY SEAS
Andrew Lannon, Palm Bay
Patricia D. Smith, Palm Bay

I. Local Government Practitioner’s Guide to Understanding Ethics Laws and Navigating Your Clients Through Them In Stormy Seas – Overview .................................................................2.1

ACT 1, SCENE 1, THE ETHICS COMPLAINT: SPOTLIGHT ON MISUSE AND NEPOTISM
Betsy Daley, Tallahassee

I. Act 1, Scene 1 – Overview .................................................................................3.1

(ETHICS) A HIKER'S GUIDE TO VOTING CONFLICTS: FINDING (AND STAYING) ON THE TRAIL
Gray Schafer, Tallahassee

I. Form 8A Memorandum of Voting Conflict for State Officers .........................4.1
II. Form 8B Memorandum of Voting Conflict for County, Municipal, and Other Local Public Officers .................................................................................................................................4.3

(ETHICS) SECOND FIDDLERS AND PARACHUTES: CONFLICTING BUSINESS RELATIONSHIPS AND POST-PUBLIC SERVICE RESTRICTIONS
C. “Chris” Christopher Anderson, III, Tallahassee

I. Persons Governed by the Ethics Laws; Mandatory Ethics Training ...................5.1
II. Anti-Nepotism Prohibition ...............................................................................5.4
III. Doing Business with One’s Agency Prohibition; Blind Trusts .........................5.5
IV. Conflicting Employment and Contractual Relationships ...............................5.10
V. Prohibition on Employees Holding Office; Dual Public Employment ..............5.20
VI. Restriction on Professional and Occupational Licensing Board Members; and Restriction on Board of Governors of State University System and Trustees of Universities Serving as a Legislative Lobbyist ................................................................. 5.21
VII. Misuse of Public Position Prohibition ........................................................................... 5.21
VIII. Prohibition Against Disclosure or use of Certain Information ...................................... 5.22
IX. Prohibition Against Solicitation and Acceptance of Certain Gifts .................................. 5.23
X. Prohibition Against Unauthorized Compensation/Gifts ................................................... 5.23
XI. Gift Prohibitions and Disclosures for “Reporting Individuals” and “Procurement Employees” ........................................................................................................... 5.24
XII. Prohibited “Expenditures” at the State Level ................................................................. 5.31
XIII. Honoraria and Honorarium Event-Related Expenses ................................................... 5.32
XIV. Local Government Attorneys ....................................................................................... 5.33
XV. Chief Administrative Officers of Political Subdivisions ................................................ 5.34
XVI. Charter School Board Members/Personnel [F.S. 1002.33(24) & (26)] ......................... 5.34
XVII. Post Office-Holding and Post Employment (Revolving Door Restrictions .................. 5.35
XVIII. Additional Restrictions (State-Level Employees; Legislators) .................................. 5.37
XIX. Voting Conflicts of Interest ......................................................................................... 5.40
XX. Financial Disclosure (Form 6- “Full” Disclosure) .......................................................... 5.48
XXI. Financial Disclosure (Form 1- “Limited” Disclosure) ....................................................... 5.50
XXII. Disclosure of Specified Business Interests ................................................................. 5.53
XXIII. Client Disclosure (Quarterly) .................................................................................... 5.54
XXIV. Authority to Adopt More Stringent Standards ............................................................. 5.55
XXV. Ethics Commission Processes and Procedures ............................................................. 5.55
XXVI. (Ethics) Second Fiddles and Parachutes: Conflicting Business Relationships and Post-Public-Service Restrictions – Overview ......................................................... 5.60

(Ethics) HARMFUL HOSPITALITY AND CORRUPTING CUPS OF COFFEE: GIFTS, HONORARIA AND MORE
Caroline Klancke, Tallahassee

AUTHORS/LECTURERS

C. CHRISTOPHER “CHRIS” ANDERSON, III received his J.D. from The Florida State University College of Law, after majoring in history at Huntingdon College in Montgomery, Alabama. Chris is a member of The Florida Bar and its Administrative Law Section, the Jefferson County Bar Association, the Florida Government Bar Association, and the State General Counsels’ Association. He serves as General Counsel and Deputy Executive Director of the Florida Commission on Ethics, an agency he has served in a number of positions over many years. Previously, he served as an Assistant State Attorney in the Second Circuit, as an Assistant Public Defender in the Seventh and Second Circuits, as a Senior Attorney for the Department of Insurance, as an Assistant General Counsel for the Department of Corrections, and as a private practitioner. Also, Chris is a past recipient of the Florida Association of County Attorneys’ Ethics Award and its Appreciation Award, and he is a frequent speaker on statutory ethics and related topics at Bar CLE programs and other events.

BETSY DALEY has been a member of the legal staff of the Florida Commission on Ethics for six years. Previously, she practiced administrative law and commercial litigation in the Tallahassee office of a Miami law firm after serving as a staff attorney in the Florida Supreme Court. She is a graduate of Florida State University College of Law and Vanderbilt University.

PAT GLEASON serves as Special Counsel for Open Government for Attorney General Pam Bondi. She has also served as the Advocate for the Florida Ethics Commission and Chief of the Administrative Law Section in the Attorney General’s Office. She is a graduate of Florida State University College of Law in Tallahassee. She is the editor of the Sunshine Manual and the Public Records Guide for Law Enforcement agencies.

CAROLINE KLANCKE is an attorney with the Florida Commission on Ethics. Prior to joining the Commission, she served as Chief Ethics Officer and Senior Attorney with the Florida Public Service Commission. Ms. Klancke is a graduate of Florida State University (B.A., cum laude, 2003) and the University of Miami School of Law (J.D., magna cum laude, 2006), where she was a member of the University of Miami International & Comparative Law Review. Ms. Klancke is a member of The Florida Bar and is admitted to practice before the Middle and Northern districts of Florida. In 2015, the Florida Government Bar Association selected her as a finalist for Government Attorney of the Year.

ANDREW PATRICK LANNON is the City Attorney for Palm Bay, Florida. Prior to joining the Palm Bay City Attorney’s Office, he clerked for Justice Peggy A. Quince at the Florida Supreme Court and worked in the Central Florida Litigation practice group of the global law firm Holland & Knight LLP, handling commercial litigation and appellate matters. He is double board certified in both Business Litigation and City, County and Local Government Law by The Florida Bar, AV-rated by Martindale-Hubbell and has been selected for inclusion in Florida Trend’s Florida Legal Elite in 2012, 2013, 2015, 2016 and 2017.

GRAYDEN "GRAY" SCHAFER is a Senior Attorney at the Florida Commission on Ethics, where he has worked since April 2013. Previously, Mr. Schafer served as a law clerk to the Florida First District Court of Appeal, as well as to the New York State Appellate Division, Third Department. Mr. Schafer is a member of The Florida and New York State Bars and is a graduate of the State University of New York at Buffalo Law School. Mr. Schafer also holds a Bachelor of Arts in English from Cedarville University.
PATRICIA D. SMITH is double board certified in State and Federal Government and Administrative Practice and City, County and Local Government. Ms. Smith began her legal career with the Office of the Public Defender for the 19th Judicial Circuit where she handled misdemeanor, juvenile and felony cases. Ms. Smith currently serves as the Deputy City Attorney for the City of Palm Bay and handles police liability, procurement and land use matters. Ms. Smith received a B.S. in Political Science from Florida State University and her J.D. from the Shepard Broad Law Center at Nova Southeastern University.
2018 OPEN GOVERNMENT UPDATE: REAL WORLD CASES ON FLORIDA'S SUNSHINE AND PUBLIC RECORDS LAWS

By

Pat Gleason, Tallahassee
I. GOVERNMENT IN THE SUNSHINE LAW

A. WHAT IS THE SCOPE OF THE SUNSHINE LAW?

Florida's Government in the Sunshine Law, commonly referred to as the Sunshine Law, provides a right of access to governmental proceedings of public boards or commissions at both the state and local levels. The law is equally applicable to elected and appointed boards and has been applied to any gathering of two or more members of the same board to discuss some matter which will foreseeably come before that board for action. There are three basic requirements of section 286.011, Florida Statutes:

1. meetings of public boards or commissions must be open to the public;
2. reasonable notice of such meetings must be given; and
3. minutes of the meetings must be taken and promptly recorded.

A right of access to meetings of collegial public bodies is also recognized in the Florida Constitution. Article I, section 24, Florida Constitution, was approved by the voters in the November 1992 general election and became effective July 1, 1993. Virtually all collegial public bodies are covered by the open meetings mandate of the open government constitutional amendment with the exception of the judiciary and the state Legislature which has its own constitutional provision requiring access. The only exceptions are those established by law or by the Constitution.

B. WHAT AGENCIES ARE COVERED BY THE SUNSHINE LAW?

1. Are all public agencies subject to the Sunshine Law?

The Government in 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." The statute thus applies to public collegial bodies within this state, at the local as well as state level. *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971). It is equally applicable to elected and appointed boards or commissions. Op. Att'y Gen. Fla. 73-223 (1973).

Federal agencies, i.e., agencies created under federal law, operating within the state do not come within the purview of the state Sunshine Law. Op. Att'y Gen. Fla. 71-191 (1971). Cf., Inf. Op. to Markham, September 10, 1996 (technical oversight committee established by state agencies as part of settlement agreement in federal lawsuit subject to Sunshine Law).

2. Are advisory boards which make recommendations or committees established for fact-finding only subject to the Sunshine Law?

a. Publicly created advisory boards which make recommendations

Advisory boards created pursuant to law or ordinance or otherwise established by public agencies may be subject to the Sunshine Law, even though their recommendations are not binding upon the agencies that create them. Town of Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974). See also, Wood v. Marston, 442 So. 2d 934 (Fla. 1983) (Sunshine Law applies to a university's search and screening committee). And see, Lyon v. Lake County, 765 So. 2d 785 (Fla. 5th DCA 2000) (Sunshine Law applies to site plan review committee created by county commission to serve in an advisory capacity to the county manager).

b. Fact-finding committees

A limited exception to the applicability of the Sunshine Law to advisory committees has been recognized for advisory committees established for fact-finding only. “[A] committee is not subject to the Sunshine Law if the committee has only been delegated information-gathering or fact-finding authority and only conducts such activities.” Sarasota Citizens for Responsible Government v. City of Sarasota, 48 So. 3d 755, 762 (Fla. 2010). And see, Cape Publications, Inc. v. City of Palm Bay, 473 So. 2d 222 (Fla. 5th DCA 1985).

However, when a committee has been delegated a decision-making function (i.e., sorting through options and making recommendations to the governmental body), in addition to fact-finding, the Sunshine Law applies. Inf. Op. to Randolph, June 10, 2010. Moreover, the ‘fact-finding exception’ does not apply to boards, like school boards, that have the “ultimate decision-making authority”; thus the school board could not take a fact-finding tour without compliance with the Sunshine Law. Finch v. Seminole County School Board, 995 So. 2d 1068 (Fla. 5th DCA 2008). See Citizens for Sunshine, Inc. v. School Board of Martin County, 125 So. 3d 184 (Fla. 4th DCA 2013) (three members of school board violated Sunshine Law when they visited an adult education center without providing reasonable notice).
3. Are private organizations providing services to public agencies subject to the Sunshine Law?

“Generally . . . the Government in the Sunshine Law does not apply to private organizations providing services to a state or local government, unless the private entity has been created by a public entity, there has been a delegation of the public entity’s governmental functions, or the private organization plays an integral part in the decision-making process of the public entity.” Op. Att’y Gen. Fla. 07-27 (2007). Thus, the Sunshine Law would not ordinarily apply to meetings of a homeowners’ association. Inf. Op. to Fasano, June 7, 1996. Compare, Op. Att’y Gen. Fla. 07-44 (2007) (property owners association subject to open government laws when it is acting on behalf of a municipal services taxing unit).

A private corporation which 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 necessarily subject to the Sunshine Law unless the public agency’s governmental or legislative functions have been delegated to it. McCoy Restaurants, Inc. v. City of Orlando, 392 So. 2d 252 (Fla. 1980) (airlines are not by virtue of their lease with the aviation authority public representatives subject to the Sunshine Law).

However, although private organizations are generally not subject to the Sunshine Law, open meetings requirements can apply if the public entity has delegated "the performance of its public purpose" to the private entity. Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation, 729 So. 2d 373, 383 (Fla. 1999). Thus, a not-for-profit corporation that contracted with a city to carry out affordable housing responsibilities and also reviewed and screened applicant files was determined to be an agency for purposes of the Sunshine Law. Op. Att’y Gen. Fla. 08-66 (2008).

Similarly, the Sunshine Law applies to a private economic development council when there has been a delegation of the county commission’s authority to conduct public business such as carrying out the terms of the county’s strategic economic development plan. Op. Att’y Gen. Fla. 10-30 (2010). See also, Op. Att’y Gen. Fla. 11-01 (2011) (Biscayne Park Foundation, a charitable foundation created by the Village of Biscayne Park to serve as ‘the Village’s fundraising arm,’ subject to the Sunshine Law. Compare, Inf. Op. to Gaetz and Coley, December 17, 2009, concluding that the open government laws did not apply to Florida’s Great Northwest, Inc., a private not-for-profit corporation, since no delegation of a public agency’s governmental function was apparent and the corporation did not appear to play an integral part in the decision-making process of a public agency.

4. Does the Sunshine Law apply to staff?

Meetings of staff of boards or commissions covered by the Sunshine Law are not ordinarily subject to section 286.011, Florida Statutes. Occidental Chemical Company
v. Mayo, 351 So. 2d 336 (Fla. 1977), disapproved in part on other grounds, Citizens v. Beard, 613 So. 2d 403 (Fla. 1992). Thus, a state agency did not violate the Sunshine Law when agency employees conducted an investigation into a licensee’s alleged failure to follow state law, and an assistant director made the decision to file a complaint. Baker v. Florida Department of Agriculture and Consumer Services, 937 So. 2d 1161 (Fla. 4th DCA 2006).

Similarly, in Sarasota Citizens for Responsible Government v. City of Sarasota, 48 So. 3d 755, 766 (Fla. 2010), the Supreme Court ruled that a deputy county administrator delegated authority to negotiate with a baseball team considering a move to the area for spring training, did not violate the Sunshine Law when he consulted with county staff because the administrator’s “so-called negotiations team only served an informational role.” And see, Lyon v. Lake County, 765 So. 2d 785 (Fla. 5th DCA 2000), in which the court concluded that the Sunshine Law did not apply to informal meetings of staff where the meetings were “merely informational;” where none of the individuals attending the meetings had any decision-making authority during the meetings; and where no formal action was taken or could have been taken at the meetings; Knox v. District School Board of Brevard, 821 So. 2d 311, 315 (Fla. 5th DCA 2002) (“A sunshine violation does not occur when a governmental executive uses staff for a fact-finding and advisory function in fulfilling his or her duties”).

However, when a staff member ceases to function in a staff capacity and is appointed to a committee which is given “a policy-based decision-making function,” the staff member loses his or her identity as staff while working on the committee and the Sunshine Law applies to the committee. It is the nature of the act performed, not the makeup of the committee or the proximity of the act to the final decision, which determines whether a committee composed of staff is subject to the Sunshine Law. Wood v. Marston, 442 So. 2d 934 (Fla. 1983). And see, Evergreen the Tree Treasurers of Charlotte County, Inc. v. Charlotte County Board of County Commissioners, 810 So. 2d 526 (Fla. 2d DCA 2002) (when public officials delegate their fact-finding duties and decision-making authority to a committee of staff members, those individuals no longer function as staff members but "stand in the shoes of such public officials" insofar as the Sunshine Law is concerned).

For example, in Wood v. Marston, supra, the Court concluded that a committee composed of staff which was created for the purpose of screening applications and making recommendations for the position of a law school dean was subject to section 286.011, Florida Statutes, since the committee members performed a decision-making function outside of their normal staff activities. 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.

Similarly, in Silver Express Company v. Miami-Dade Community College, 691 So. 2d 1099 (Fla. 3d DCA 1997), the district court determined that a committee (composed of staff and one outside person) that was created by a college purchasing director to assist and advise her in evaluating contract proposals was subject to the
Sunshine Law. According to the court, the committee’s job was to weed through the various proposals, to determine which were acceptable and to rank them accordingly. This function was sufficient to bring the committee within the scope of the Sunshine Law because “[g]overnmental advisory committees which have offered up structured recommendations such as here involved -- at least those recommendations which eliminate opportunities for alternative choices by the final authority, or which rank applications for the final authority -- have been determined to be agencies governed by the Sunshine Law.” 691 So. 2d at 1101. And see, Op. Att’y Gen. Fla. 05-06 (2005) (city development review committee composed of several city officials and representatives of various city departments to review and approve development applications, is subject to the Sunshine Law); and Op. Att’y Gen. Fla. 07-54 (2007), concluding that while post-termination hearings held before the city manager are not subject to the Sunshine Law, hearings held before a three member panel appointed by the city manager pursuant to the city personnel policy should be held in the Sunshine.

In making the determination as to whether a staff committee has “decision-making authority” so as to bring the group within the scope of the Sunshine Law, a key factor may be whether the committee deliberates with the person who makes the final decision. For example, the Fourth District held that deliberations of a pre-termination panel composed of the department head, personnel director and equal opportunity director should have been held in the Sunshine. Dascott v. Palm Beach County, 877 So. 2d 8 (Fla. 4th DCA 2004). Compare, McDougall v. Culver, 3 So. 3d 391, 394 (Fla. 2d DCA 2009) (circulation of memoranda by senior officials in sheriff’s office which contained findings and recommendations in connection with an internal affairs investigation did not constitute a “meeting” for purposes of the Sunshine Law because the sheriff alone made the final decision on discipline; “the senior officials provided only a recommendation to the Sheriff but they did not deliberate with him nor did they have decision-making authority.”); Jordan v. Jenne, 938 So. 2d 526, 530 (Fla. 4th DCA 2006) (“Because the [group] provided only a recommendation to the inspector general and did not deliberate with the inspector general, the ultimate authority on termination, we conclude that the [group] does not exercise decision-making authority so as to constitute a ‘board’ or commission within the meaning of section 286.011, and as a result, its meetings are not subject to the Sunshine Act”); and Sarasota Citizens for Responsible Government v. City of Sarasota, 48 So. 3d 755, 763 (Fla. 2010) (county administrator’s consultations with staff did not violate the Sunshine Law because the individuals served “an informational role;” “[t]his is not a situation where the [administrator] and the individuals he consulted made joint decisions”).

5. Does the Sunshine Law apply to members of public boards who also serve as administrative officers or employees?

Occasionally, members of public boards also serve as administrative officers or employees. The Sunshine Law is not applicable to discussions of those individuals when serving as administrative officers or employees, provided such discussions do not relate to matters which will come before the public board on which they serve. Thus, a
board member who also serves as an employee of an agency may meet with another board member on issues relating to his or her duties as an employee provided such discussions do not relate to matters that will come before the board for action. See, Ops. Att'y Gen. Fla. 93-41 (1993) and 11-04 (2011). Cf. section 286.01141, Florida Statutes (2013), providing an exemption for portions of meetings of local advisory criminal justice commissions.

C. WHAT IS A MEETING SUBJECT TO THE SUNSHINE LAW?

1. **Number of board members required to be present**

The Sunshine Law extends to the discussions and deliberations as well as the formal action taken by a public board or commission. There is no requirement that a quorum be present for a meeting of members of a public board or commission to be subject to section 286.011, Florida Statutes. Instead, the 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. *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973).

Thus, two members of a civil service board violated the Sunshine Law when they held a private discussion of a pending employment appeal during a recess of the board meeting. *Citizens for Sunshine, Inc. v. City of Sarasota*, No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012). Compare Op. Att'y Gen. Fla. 04-58 (2004) ("coincidental unscheduled meeting of two or more county commissioners to discuss emergency issues with staff" during a declared state of emergency not subject to s. 286.011 if the issues do not require action by the county commission).

2. **Circumstances in which the Sunshine Law may apply to a single individual or where two board members are not physically present**

The Sunshine Law applies to public boards and commissions, *i.e.*, collegial bodies. As discussed supra, section 286.011, Florida Statutes, applies to meetings of "two or more members" of the same board or commission when discussing some matter which will foreseeably come before the board or commission.

Therefore, section 286.011, Florida Statutes, would not ordinarily apply to an individual member of a public board or commission or to public officials who are not board or commission members. See, *Deerfield Beach Publishing, Inc. v. Robb*, 530 So. 2d 510 (Fla. 4th DCA 1988) (requisite to application of the sunshine law is a meeting between two or more public officials); *City of Sunrise v. News and Sun-Sentinel Company*, 542 So. 2d 1354 (Fla. 4th DCA 1989); *Mitchell v. School Board of Leon County*, 335 So. 2d 354 (Fla. 1st DCA 1976); and *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755 (Fla. 2010) (private one-on-one informational briefings between individual county commissioners and staff did not violate the Sunshine Law).
Certain factual situations, however, have arisen where, in order to assure public access to the decision-making processes of public boards or commissions, it has been necessary to conclude that the presence of two individuals of the same board or commission is not necessary to trigger application of section 286.011, Florida Statutes. As stated by the Supreme Court, the Sunshine Law is to be construed "so as to frustrate all evasive devices." *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974).

a. **Written communications between board members**

A city commissioner may, outside a public meeting, send documents that the commissioner wishes other members of the commission to consider on matters coming before the commission for official action, provided that there is no response from, or interaction related to such documents among, the commissioners prior to the public meeting. Op. Att'y Gen. Fla. 07-35 (2007). In such cases, the records, which are subject to disclosure under the Public Records Act, are not being used as a substitute for action at a public meeting as there is no interaction among the commissioners prior to the meeting. Op. Att'y Gen. Fla. 89-23 (1989).

If, however, a report is circulated among board members for comments with such comments being provided to other members, there is interaction among the board members which is subject to section 286.011, Florida Statutes. Op. Att'y Gen. Fla. 90-3 (1990). Accordingly, while a school board member may prepare and circulate an informational memorandum or position paper to other board members, the use of a memorandum to solicit comment from other board members or the circulation of responsive memoranda by other board members would violate the Sunshine Law. Op. Att'y Gen. Fla. 96-35 (1996).

Similarly, a procedure whereby a board takes official action by circulating a memorandum for each board member to sign whether the board member approves or disapproves of a particular issue, violates the Sunshine Law. Inf. Op. to Blair, May 29, 1973. *And see Leach-Wells v. City of Bradenton*, 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999) (selection committee created by city council to evaluate proposals violated the Sunshine Law when the city clerk unilaterally ranked the proposals based on the committee members’ individual written evaluations; the court held that “the short-listing was formal action that was required to be taken at a public meeting”). *Compare, Carlson v. Department of Revenue*, 42 F.L.W. D2083 (Fla. 1st DCA September 29, 2017) (agency evaluation team members who individually reviewed competing proposals and did not rank competitors or exclude any from consideration by the ultimate decider, were not required to hold public meetings).

b. **Meetings conducted over the telephone or using electronic media technology**

(1) Discussions conducted via telephones, email, text
messaging or other electronic means are not exempted from the Sunshine Law.

As stated previously, the Sunshine Law applies to discussions between two or more members of a board or commission on some matter which foreseeably will come before that board or commission for action. The use of a telephone to conduct such discussions does not remove the conversation from the requirements of section 286.011, Florida Statutes. *See, State v. Childers*, No. 02-21939-MMC; 02-21940-MMB (Escambia Co. Ct. June 5, 2003), *per curiam affirmed*, 886 So. 2d 229 (Fla. 1st DCA 2004) (telephone conversation during which two county commissioners and the supervisor of elections discussed redistricting violated the Sunshine Law).

Similarly, board members may not use computers to conduct private discussions among themselves about board business. *Op. Att'y Gen. Fla. 89-39* (1989). Thus, while a city commissioner is not prohibited from posting comments on the city’s Facebook page, commissioners “must not engage in an exchange or discussion of matters that foreseeably will come before the board or commission for official action.” *Op. Att'y Gen. Fla. 09-19* (2009). *Cf.*, *Inf. Op. to Galaydick*, October 15, 1995, advising that school board members may share a laptop computer even though the hard drive of the computer contains information reflecting the ideas of an individual member as long as the computer is not being used as a means of communication between members; and *Op. Att'y Gen. Fla. 01-20* (2001) (a one-way e-mail communication from one city council member to another, when it does not result in the exchange of council members’ comments or responses on subjects requiring council action, does not constitute a meeting subject to the Sunshine Law; however, such e-mail communications are public records).

(2) Authority of boards to conduct public meetings via electronic media technology (e.g. telephone or video conferencing).

A related issue is whether a board is authorized to conduct public meetings via electronic media technology (e.g., telephone or video conferencing). The answer to this question depends upon whether the board is a state or local government agency.

In *Op. Att'y Gen. Fla. 98-28* (1998), the Attorney General’s Office concluded that section 120.54(5)(b)2., Florida Statutes, authorizes state agencies to conduct meetings via electronic means provided that the board complies with uniform rules of procedure adopted by the state Administration Commission. These rules contain notice requirements and procedures for providing points of access for the public. *See, Rule 28-109, Florida Administrative Code.*

As to local boards, the Attorney General's Office advised that the authorization in section 120.54(5)(b)2., Florida Statutes, to conduct meetings entirely through the use of communications media technology applies only to state agencies. *Op. Att'y Gen. Fla. 98-28* (1998). Thus, since section 1001.372(2)(b), Florida Statutes, requires a district
school board to hold its meetings at a "public place in the county," a quorum of the board must be physically present at the meeting of the school board. *Id.*

However, if a quorum of a local board is physically present at the public meeting site, "the participation of an absent member by telephone conference or other interactive electronic technology is permissible when such absence is due to extraordinary circumstances such as illness[;] . . . [w]hether the absence of a member due to a scheduling conflict constitutes such a circumstance is a determination that must be made in the good judgment of the board." Op. Att'y Gen. Fla. 03-41 (2003).

For example, if a quorum of a local board is physically present at the public meeting site, a board may allow a member with health problems to participate and vote in board meetings through the use of such devices as a speaker telephone that allow the absent member to participate in discussions, to be heard by other board members and the public, and to hear discussions taking place during the meeting. Op. Att'y Gen. Fla. 94-55 (1994). *See also* Op. Att'y Gen. Fla. 02-82 (2002) (physically-disabled members of a city advisory committee participating and voting by electronic means).


The physical presence of a quorum has not been required, however, where electronic media technology (such as video conferencing and digital audio) is used to allow public access and participation at *workshop* meetings where no formal action will be taken. Thus, the Attorney General's Office concluded that local boards may use electronic media technology to conduct informal discussions and workshops over the Internet, provided that proper notice is given, and interactive access by members of the public is provided. Op. Att'y Gen. Fla. 01-66 (2001). *See also* Op. Att'y Gen. Fla. 06-20 (2006).

However, the use of an electronic bulletin board to discuss matters over an extended period of days or weeks violates the Sunshine Law by circumventing the notice and access provisions of that law. Op. Att'y Gen. Fla. 02-32 (2002). *Compare* Op. Att'y Gen. Fla. 08-65 (2008) (city advisory boards may conduct workshops lasting no more than two hours using an on-line bulletin board if proper notice is given and interactive access by members of the public is provided and the city ensures that operating-type assistance is available where the computers for the public are located).

c. Delegation of authority to single individual

If a member of a public board is authorized only to explore various contract
proposals with the applicant selected for the position of executive director, with such proposals being related back to the governing body for consideration, the discussions between the board member and the applicant are not subject to the Sunshine Law. Op. Att’y Gen. Fla. 93-78 (1993). If, however, the board member has been delegated the authority to reject certain options from further consideration by the entire board, the Attorney General’s Office has concluded that the board member is performing a decision-making function that must be conducted in the sunshine. Ops. Att’y Gen. Fla. 95-06 (1995) and Op. Att’y Gen. Fla. 93-78 (1993). Compare, Lee County v. Pierpont, 693 So. 2d 994 (Fla. 2d DCA 1997) (authorization to county attorney to make settlement offers to landowners not to exceed appraised value plus 20%, rather than a specific dollar amount, did not violate the Sunshine Law).

Thus, the Attorney General’s Office has advised that while the Sunshine Law would not ordinarily apply to an individual member of a public board or commission or to public officials who are not board or commission members, the Sunshine law does apply when there has been a delegation of a board’s decision-making authority. Op. Att’y Gen. Fla. 10-15 (2010).

More recently, the First District Court of Appeal ruled that a statute requiring a “committee” of a national insurance rating organization to comply with the Sunshine Law when meeting to discuss the need to alter Florida rates did not apply to an actuary who performed this function instead of a committee. National Council on Compensation Insurance v. Fee, 219 So. 3d 172 (Fla. 1st DCA 2017). In Fee, the court noted that the term “committee” has been defined as a “subordinate group,” not a single person and that “the multi-person concept of the term committee further finds support in well-established precedent construing the Sunshine Law.”

Moreover, if the individual, rather than the board, is vested by law, charter or ordinance with the authority to take action, such discussions are not subject to section 286.011, Florida Statutes. See, City of Sunrise v. News and Sun-Sentinel Company, 542 So. 2d 1354 (Fla. 4th DCA 1989). Cf. Op. Att’y Gen. Fla. 13-14 (2013) (where contract terms regarding the police chief’s employment have been discussed and approved at a public city commission meeting, Sunshine Law does not require that the written employment contract drafted by the town attorney as directed by the commission be subsequently presented to, considered and approved by the commission at another commission meeting).

d. Use of nonmembers as liaisons between board members or to conduct a “de facto” meeting of board members

The Sunshine Law is applicable to meetings between a board member and an individual who is not a member of the board when that individual is being used as a liaison between, or to conduct a de facto meeting of, board members. For example, in Blackford v. School Board of Orange County, 375 So. 2d 578 (Fla. 5th DCA 1979), the
courtheld that a series of scheduled successive meetings between the school superintendent and individual members of the school board were subject to the Sunshine Law. While normally meetings between the school superintendent and an individual school board member would not be subject to section 286.011, Florida Statutes, these meetings were held in "rapid-fire succession" in order to avoid a public airing of a controversial redistricting problem. They amounted to a de facto meeting of the school board in violation of section 286.011, Florida Statutes.

Not all staff decisions, however, are required to be made or approved by the board. Thus, the district court concluded in Florida Parole and Probation Commission v. Thomas, 364 So. 2d 480 (Fla. 1st DCA 1978), that the decision to appeal made by legal counsel to a public board after discussions between the legal staff and individual members of the commission was not subject to the Sunshine Law.

D. WHAT TYPES OF DISCUSSIONS ARE COVERED BY THE SUNSHINE LAW?

1. Investigative meetings or meetings to consider confidential material

The Sunshine Law is applicable to investigative inquiries of public boards or commissions. The fact that a meeting concerns alleged violations of laws or regulations does not remove it from the scope of the law. Op. Att'y Gen. Fla. 74-84 (1974); Canney v. Board of Public Instruction of Alachua County, 278 So. 2d 260 (Fla. 1973). The Florida Supreme Court has stated that in the absence of a statute exempting a meeting in which privileged material is discussed, section 286.011, Florida Statutes, should be construed as containing no exceptions. City of Miami Beach v. Berns, 245 So. 2d 38 (Fla. 1971).

Section 119.07(7), Florida Statutes, provides that an exemption from section 119.07, Florida Statutes, "does not imply an exemption from s. 286.011. The exemption from s. 286.011 must be expressly provided." Thus, exemptions from the Public Records Act, do not by implication allow a public agency to close a meeting in which exempted material is to be discussed in the absence of a specific exemption from the Sunshine Law. See, Ops. Att'y Gen. Fla. 10-04 (2010) (school board discussing confidential student records) and 91-88 (1991) (pension board). Cf. Op. Att'y Gen. Fla. 12-20 (2012) (county board designated as "appropriate local official" authorized by statute to receive and investigate whistle-blower complaints must comply with the Sunshine Law, and must also "protect the confidential information it is considering at a meeting and must not disclose the name of the whistle-blower unless one of the specific circumstances listed in the [whistle-blower law] is present").

2. Legal matters

In the absence of legislative exemption, discussions between a public board and its attorney are subject to section 286.011, Florida Statutes. Neu v. Miami Herald
Publishing Company, 462 So. 2d 821 (Fla. 1985) (section 90.502, Florida Statutes, which provides for the confidentiality of attorney-client communications under the Florida Evidence Code, does not create an exemption for attorney-client communications at public meetings). *Cf.*, section 90.502(6), Florida Statutes, stating that a discussion or activity that is not a meeting for purposes of the Sunshine Law shall not be construed to waive the attorney-client privilege.

There are statutory exemptions, however, which apply to some discussions of pending litigation between a public board and its attorney.

a. **Settlement negotiations or strategy sessions related to litigation expenditures**

Section 286.011(8), Florida Statutes, provides:

Notwithstanding the provisions of subsection (1), any board or commission of any state agency or authority or any agency or authority of any county, municipal corporation, or political subdivision, and the chief administrative or executive officer of the governmental entity, may meet in private with the entity's attorney to discuss pending litigation to which the entity is presently a party before a court or administrative agency, provided that the following conditions are met:

(a) The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation.

(b) The subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures.

(c) The entire session shall be recorded by a certified court reporter. The reporter shall record the times of commencement and termination of the session, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of the session shall be off the record. The court reporter's notes shall be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting.

(d) The entity shall give reasonable public notice of the time and date of the attorney-client
session and the names of persons who will be attending the session. The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending. At the conclusion of the attorney-client session, the meeting shall be reopened and the person chairing the meeting shall announce the termination of the session.

(e) The transcript shall be made part of the public record upon conclusion of the litigation. (e.s.)

1. Is section 286.011(8), Florida Statutes, to be liberally or strictly construed?

It has been held that the Legislature intended a strict construction of section 286.011(8), Florida Statutes. City of Dunnellon v. Aran, 662 So. 2d 1026 (Fla. 5th DCA 1995); School Board of Duval County v. Florida Publishing Company, 670 So. 2d 99 (Fla. 1st DCA 1996).

2. Who may call an attorney-client meeting?

While section 286.011(8), Florida Statutes, does not specify who calls the closed attorney-client meeting, it requires as one of the conditions that must be met that the governmental entity’s attorney "shall advise the entity at a public meeting that he or she desires advice concerning the litigation."

The requirement that the board's attorney advise the board at a public meeting that he or she desires advice concerning litigation, is not satisfied by a previously published notice of the closed session. Op. Att’y Gen. Fla. 04-35 (2004). Rather, such an announcement must be made at a public meeting of the board. Id. Cf., Op. Att’y Gen. Fla. 07-31 (2007) (a board attorney’s request for a section 286.011[8], Florida Statutes, meeting may be made at a special meeting of the board provided that the special meeting at which the request is made is open to the public, reasonable notice has been given, and minutes are taken).

3. Who may attend?

Only those persons listed in the statutory exemption, i.e., the entity, the entity's attorney, the chief administrative officer of the entity, and the court reporter are authorized to attend a closed attorney-client session. Other staff members or consultants are not allowed to be present. School Board of Duval County v. Florida Publishing Company. And see, Zorc v. City of Vero Beach, 722 So. 2d 891, 898 (Fla. 4th DCA 1998), review denied, 735 So. 2d 1284 (Fla. 1999) (rejecting city's argument
that charter provision requiring that city clerk attend all council meetings authorized clerk to attend closed attorney-client meeting); Op. Att'y Gen. Fla. 09-52 (2009) (attorneys representing superintendent of schools in an administrative action where the school board is a named party not authorized to meet privately with school board); and Op. Att'y Gen. Fla. 01-10 (2001) (clerk of court not authorized to attend).

However, because the entity's attorney is permitted to attend the closed session, if the school board hires outside counsel to represent it in pending litigation, both the school board attorney and the litigation attorney may attend a closed session. Op. Att'y Gen. Fla. 98-06 (1998). And see, Zorc v. City of Vero Beach (attendance of Special Counsel authorized). And, a qualified interpreter may attend to interpret for hearing impaired board members without violating the Sunshine Law. Op. Att'y Gen. Fla. 08-42 (2008).

(4) **Is substantial compliance with the conditions established in the statute adequate?**

In City of Dunnellon v. Aran, supra, the court said that a city council's failure to announce the names of the lawyers participating in a closed attorney-client session violated the Sunshine Law. The court rejected the city's claim that when the mayor announced that attorneys hired by the city would attend the session [but did not give the names of the individuals], his "substantial compliance" was sufficient to satisfy the statute. Cf., Zorc v. City of Vero Beach, at 901, noting that deviation from the agenda at an attorney-client session is not authorized; while such deviation is permissible if a public meeting has been properly noticed, "there is no case law affording the same latitude to deviations in closed door meetings."

(5) **What kinds of matters may be discussed at the attorney-client session?**

Section 286.011(8) states that the subject matter of the meeting shall be confined to settlement negotiations or strategy sessions related to litigation expenditures. Section 286.011(8)(b), Florida Statutes.

Moreover, section 286.011(8), Florida Statutes, "simply provides a governmental entity's attorney an opportunity to receive necessary direction and information from the government entity. No final decisions on litigation matters can be voted on during these private, attorney-client strategy meetings. The decision to settle a case, for a certain amount of money, under certain conditions is a decision which must be voted upon in a public meeting." School Board of Duval County v. Florida Publishing Company, 670 So. 2d 99, 100 (Fla. 1st DCA 1996), quoting Staff of Fla.H.R.Comm. on Government Operations, CS/HB 491 (1993) Final Bill Analysis & Economic Impact Statement at 3. If a board goes beyond the "strict parameters of settlement negotiations and strategy sessions related to litigation expenditures" and takes "decisive action," a violation of the Sunshine Law results. Zorc v. City of Vero Beach, at 900. And see, Op. Att'y Gen. Fla. 99-37 (1999).
Thus, "[t]he settlement of a case is exactly that type of final decision contemplated by the drafters of section 286.011(8) which must be voted upon in the sunshine." Zorc v. City of Vero Beach, at 901. Accord, Op. Att'y Gen. Fla. 08-17 (2008) ("any action to approve a settlement or litigation expenditures must be voted on in a public meeting"). See also, Anderson v. City of St. Pete Beach, 161 So. 3d 548 (Fla. 2d DCA 2014) (city violated the Sunshine Law when it held closed meetings that "covered a wide range of political and policy issues not connected to settlement of the pending litigation or relating to the expenses of litigating the pending cases, which at that point were on appeal"). Compare, Bruckner v. City of Dania Beach, 823 So. 2d 167, 172 (Fla. 4th DCA 2002) (closed city commission meeting to discuss various options to settle a lawsuit involving a challenge to a city resolution, including modification of the resolution, authorized because the commission "neither voted, took official action to amend the resolution, nor did it formally decide to settle the litigation"); and Brown v. City of Lauderdale, 654 So. 2d 302, 303 (Fla. 4th DCA 1995) (closed-door session between city attorney and board to discuss claims for attorney's fees, authorized).

(6) When is an agency a "party to pending litigation" for purposes of the exemption?

In Brown v. City of Lauderdale, supra, the court said it could "discern no rational basis for concluding that a city is not a 'party' to pending litigation in which it is the real party in interest." Accord, Op. Att'y Gen. 09-15 (2009) (where city is a "real party in interest" of a pending lawsuit, it may conduct a closed attorney-client session even though it is not a named party to the litigation at the time of the meeting). And see, Zorc v. City of Vero Beach, at 900 (city was presently a party to ongoing litigation by virtue of its already pending claims in bankruptcy proceedings).

Although the Brown decision established that the exemption could be used by a city that was a real party in interest on a claim involved in pending litigation, that decision does not mean that an agency may meet in executive session with its attorney where there is only the threat of litigation. See, Op. Att'y Gen. Fla. 98-21 (1998) (section 286.011(8) exemption "does not apply when no lawsuit has been filed even though the parties involved believe litigation is inevitable"). And see, Ops. Att'y Gen. Fla. 09-25 (2009) (town council that has received a pre-suit notice under the Bert J. Harris Act is not a party to pending litigation and, therefore, may not conduct a closed meeting to discuss settlement negotiations), 06-03 (2006) (exemption not applicable to pre-litigation mediation proceedings); 13-17 (2013) (exemption may not be used to conduct a closed meeting during a mandatory arbitration proceeding, when there is no pending legal proceeding in a court or before an administrative agency); and Inf. Op. to Barrett, February 17, 2016 (board not entitled to use exemption to discuss pending investigation and subpoena where there is no on-going judicial or administrative proceeding).

Accordingly, discussions between the city attorney and the city commission relating to settlement of a conflict under the Florida Governmental Conflict Resolution
Act would not come within the scope of the exemption because “[n]othing in section 286.011(8), Florida Statutes, extends the coverage of the exemption to discussions of mediated disputes or to issues arising through the conflict resolution procedure whether or not litigation has been filed.” Op. Att’y Gen. Fla. 09-14 (2009).

(7) When is litigation "concluded" for purposes of section 286.011(8)(e)?

Section 286.011(8)(e), Florida Statutes, provides that transcripts of closed meetings “shall be made part of the public record upon conclusion of the litigation.” The exemption does not continue for “derivative claims” made in separate, subsequent litigation. Op. Att’y Gen. Fla. 13-13 (2013). For example, a transcript of a closed meeting to discuss settlement of a lawsuit became a public record upon the entry of a final judgment in that case even though the same parties were now embroiled in an inverse condemnation lawsuit. Chmielewski v. City of St. Pete Beach, 161 So. 3d 521 (Fla. 2d DCA 2014).

However, litigation that is ongoing but temporarily suspended pursuant to a stipulation for settlement has not been concluded for purposes of section 286.011(8), and a transcript of meetings held between the city and its attorney to discuss such litigation may be kept confidential until conclusion of the litigation. Op. Att’y Gen. Fla. 94-64 (1994). And see, Op. Att’y Gen. Fla. 94-33 (1994), concluding that to give effect to the purpose of section 286.011(8), a public agency may maintain the confidentiality of a record of a strategy or settlement meeting between a public agency and its attorney until the suit is dismissed with prejudice or the applicable statute of limitations has run. And see Inf. Op. to Boutsis, December 13, 2012, noting that the exemption continues through the appeals segment of the litigation.

The release by the city council of attorney-client transcripts from meetings held pursuant to section 286.011(8), Florida Statutes, prior to the “conclusion of litigation” would not constitute a violation of that statutory provision, but would represent a waiver of the limited exemption afforded to government agencies and their attorneys to discuss pending litigation issues. Op. Att’y Gen. Fla. 13-21 (2013).

b. Risk management

Section 768.28(16)(c), Florida Statutes, states that portions of meetings and proceedings relating solely to the evaluation of claims or to offers of compromise of claims filed with a risk management program of the state, its agencies and subdivisions, are exempt from the Sunshine Law.

This exemption is limited and applies only to tort claims for which the agency may be liable under section 768.28, Florida Statutes. Op. Att’y Gen. Fla. 04-35 (2004). The exemption is not applicable to meetings held prior to the filing of a tort claim with the risk management program. Op. Att’y Gen. Fla. 92-82 (1992). Moreover, a meeting of a city’s risk management committee is exempt from the Sunshine Law only when the
meeting relates solely to the evaluation of a tort claim filed with the risk management program or relates solely to an offer of compromise of a tort claim filed with the risk management program. Op. Att'y Gen. Fla. 04-35 (2004).

Unlike section 286.011(8), Florida Statutes, however, section 768.28(16), Florida Statutes, does not specify the personnel who are authorized to attend the meeting. See, Op. Att'y Gen. Fla. 00-20 (2000), advising that personnel of the school district who are involved in the risk management aspect of the tort claim being litigated or settled may attend such meetings without jeopardizing the confidentiality provisions of the statute.

3. Personnel matters

Meetings of a public board or commission at which personnel matters are discussed are not exempt from the provisions of section 286.011, Florida Statutes, in the absence of a specific statutory exemption. Times Publishing Company v. Williams, 222 So. 2d 470 (Fla. 2d DCA 1969), disapproved in part on other grounds, Neu v. Miami Herald Publishing Company, 462 So. 2d 821 (Fla. 1985). And see, Op. Att'y Gen. Fla. 10-14 (2010) (collegial board created by board of directors of a charter school to oversee personnel decisions of the school is subject to the Sunshine Law).

a. Collective bargaining discussions

A limited exemption from section 286.011, Florida Statutes, exists for discussions between the chief executive officer of the public employer and the legislative body of the public employer relative to collective bargaining. Section 447.605(1), Florida Statutes. Cf., Op. Att'y Gen. Fla. 99-27 (1999), noting that a committee (composed of the city manager and various city managerial employees) formed by the city manager to represent the city in labor negotiations qualifies as the "chief executive officer" and thus may participate in closed executive sessions conducted pursuant to this section.

Section 447.605(1), Florida Statutes, does not directly address the dissemination of information that may be obtained at a closed labor negotiation meeting, but there is clear legislative intent that matters discussed during such meetings are not to be open to public disclosure. Op. Att'y Gen. Fla. 03-09 (2003).

The section 447.605(1) exemption applies only when there are actual and impending collective bargaining negotiations. City of Fort Myers v. News-Press Publishing Company, Inc., 514 So. 2d 408 (Fla. 2d DCA 1987). It does not apply to other nonexempt topics which may be discussed during the course of the same meeting. Op. Att'y Gen. Fla. 85-99 (1985).

Moreover, the collective bargaining negotiations between the chief executive officer and a bargaining agent are not exempt and, pursuant to section 447.605(2), Florida Statutes, must be conducted in the Sunshine. See Brown v. Denton, 152 So. 3d 8 (Fla. 1st DCA 2014) (closed-door federal mediation sessions which resulted in
mediation agreement changing pension benefits of city employees in certain unions constituted collective bargaining negotiations which should have been held in the Sunshine).

b. Disciplinary hearings and grievance committees

A meeting of a municipal housing authority commission to conduct an employee termination hearing is subject to the Sunshine Law. Op. Att'y Gen. Fla. 92-65 (1992). Similarly, in Dascott v. Palm Beach County, 877 So. 2d 8 (Fla. 4th DCA 2004), the court held that deliberations of pre-termination panel composed of the department head, personnel director and equal opportunity director should have been held in the Sunshine. And see Citizens for Sunshine Inc. v. City of Sarasota, No. 2010CA4387NC (Fla. 12th Cir. Ct. February 27, 2012) (two members of a civil service board violated the Sunshine Law when they held a private discussion about a pending employment termination appeal during a recess).

However, the Sunshine Law does not apply to a professional standards committee responsible for reviewing charges against a sheriff's deputy and making recommendations to the inspector general as to whether the charges should be sustained, dismissed, or whether the case should be deferred for more information. Jordan v. Jenne, 938 So. 2d 526 (Fla. 4th DCA 2006). And see, Op. Att'y Gen. Fla. 07-54 (2007), concluding that while post-termination hearings held before the city manager are not required to be open, hearings held before a three member panel appointed by the city manager pursuant to the city personnel policy should be held in the Sunshine. Accord, Op. Att'y Gen. Fla. 10-14 (2010) (while a single officer, accomplishing his or her official duties and responsibilities may not be subject to the Sunshine Law while discharging those duties, the creation of a board or commission to accomplish these duties or the delegation of responsibility to a collegial body may implicate the Sunshine Law).

The Sunshine Law applies to board discussions concerning grievances and other personnel matters. Op. Att'y Gen. Fla. 76-102 (1976). A staff grievance committee created to make nonbinding recommendations to a county administrator regarding disposition of employee grievances is also subject to section 286.011, Florida Statutes. Op. Att'y Gen. Fla. 84-70 (1984). And see, Palm Beach County Classroom Teacher's Association v. School Board of Palm Beach County, 411 So. 2d 1375 (Fla. 4th DCA 1982), in which the court affirmed the lower court's refusal to issue a temporary injunction to exclude a newspaper reporter from a grievance hearing. A collective bargaining agreement cannot be used "to circumvent the requirements of public meetings" in section 286.011, Florida Statutes. Id. at 1376.

c. Interviews

The Sunshine Law applies to meetings of a board of county commissioners when interviewing applicants for county positions appointed by the board, when conducting

d. Screening advisory committees

In Wood v. Marston, 442 So. 2d 934 (Fla. 1983), a committee composed of staff which was created for the purpose of screening applications for the position of a law school dean and making recommendations to the faculty senate was held to be subject to section 286.011, Florida Statutes, since the committee performed a decision-making function outside of their normal staff activities. 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.

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. See, Cape Publications, Inc. v. City of Palm Bay, 473 So. 2d 222 (Fla. 5th DCA 1985); Knox v. District School Board of Brevard, 821 So. 2d 311 (Fla. 5th DCA 2002).

4. Quasi-judicial proceedings

The Florida Supreme Court has stated that there is no exception to the Sunshine Law which would allow closed-door hearings or deliberations when a board or commission is acting in a "quasi-judicial" capacity. Canney v. Board of Public Instruction of Alachua County, 278 So. 2d 260 (Fla. 1973).

5. Purchasing committees

A committee appointed by a public college's purchasing director to consider proposals submitted by contractors was held to be subject to the Sunshine Law because its function was to “weed through the various proposals, to determine which were acceptable and to rank them accordingly.” Silver Express Company v. District Board of Lower Tribunal Trustees, 691 So. 2d 1099, 1100 (Fla. 3d DCA 1997). And see Leach-Wells v. City of Bradenton, 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999) (selection committee created by city council to evaluate proposals violated the Sunshine Law when the city clerk unilaterally ranked the proposals based on the committee members' individual written evaluations; the court held that “the short-listing was formal action that was required to be taken at a public meeting”). See now section 286.0113(2)(b)1. and 2., Florida Statutes, providing a limited exception from the Sunshine Law for certain activities conducted pursuant to a competitive solicitation); and Carlson v. State, 42 F.L.W. D2083 (Fla. 1st DCA September 29, 2017) (discussing scope of the exemption).

6. Real property negotiations
In the absence of a statutory exemption, the negotiations by a public board or commission for the sale or purchase of property must be conducted in the sunshine. See, *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971). In addition, if the authority of the public board or commission to acquire or lease property has been delegated to a single member, that member is subject to section 286.011, Florida Statutes, and is prohibited from negotiating the acquisition or lease of the property in secret. Op. Att'y Gen. Fla. 74-294 (1974).

E. DOES THE SUNSHINE LAW APPLY TO:

1. **Members-elect or candidates**

   Section 286.011, Florida Statutes, applies to meetings of public boards or commissions “including meetings with or attended by any person elected to such board or commission, but who has not yet taken office . . . .” Thus, members-elect are subject to the Sunshine Law in the same manner as board members who are currently in office. See also, *Hough v. Stembridge*, 278 So. 2d 288, 289 (Fla. 3d DCA 1973).

   The Sunshine Law does not apply to candidates for office, unless the candidate is an incumbent seeking reelection. Op. Att'y Gen. Fla. 92-05 (1992). A candidate who is unopposed is not considered to be a member-elect subject to the Sunshine Law until the election has been held. AGO 98-60; Inf. Op. to Popowitz, August 12, 2016.

2. **Members of different boards**

   The Sunshine Law does not apply to a meeting between individuals who are members of different boards unless one or more of the individuals has been delegated the authority to act on behalf of his board. *Rowe v. Pinellas Sports Authority*, 461 So. 2d 72 (Fla. 1984). Accord, Inf. Op. to McClash, April 29, 1992 (Sunshine Law generally not applicable to county commissioner meeting with individual member of metropolitan planning organization).

3. **A mayor and a member of the city council**

   If the mayor is a member of the council or has a voice in decision-making through the power to break tie votes, meetings between the mayor and a member of the city council to discuss some matter which will come before the city council are subject to the Sunshine Law. Ops. Att'y Gen. Fla. 83-70 (1983) and 75-210 (1975).

   Where, however, the mayor is not a member of the city council and does not possess any power to vote even in the case of a tie vote but only possesses the power to veto legislation, then the mayor may privately meet with an individual member of the city council without violating the Sunshine Law, provided he or she is not acting as a liaison between members and neither the mayor nor the council member has been delegated the authority to act on behalf of the council. Ops. Att'y Gen. Fla. 90-26 (1990) and 85-36 (1985). And see, Inf. Op. to Cassady, April 7, 2005 (meeting between a
mayor and a council member to discuss prospective employees).

4. **A board member and his or her alternate**

   Since the alternate is authorized to act only in the absence of a board or commission member, there is no meeting of two individuals who exercise independent decision-making authority at the meeting. There is, in effect, only one decision-making official present. Therefore, a meeting between a board member and his or her alternate is not subject to the Sunshine Law. Op. Att'y Gen. Fla. 88-45 (1988).

5. **Ex officio board members**

   An *ex officio* board member is subject to the Sunshine Law regardless of whether he or she is serving in a voting or non-voting capacity. Op. Att'y Gen. Fla. 05-18 (2005).

6. **Community forums sponsored by private organizations**

   A "Candidates' Night" sponsored by a private organization at which candidates for public office, including several incumbent city council members, will speak about their political philosophies, trends, and issues facing the city, is not subject to the Sunshine Law unless the council members discuss issues coming before the council among themselves. Op. Att'y Gen. Fla. 92-5 (1992).

   Similarly, in Op. Att'y Gen. Fla. 94-62 (1994), the Attorney General’s Office concluded that the Sunshine Law does not apply to a political forum sponsored by a private civic club during which county commissioners express their position on matters that may foreseeably come before the commission, so long as the commissioners avoid discussions among themselves on these issues.

   However, caution should be exercised to avoid situations in which private political or community forums may be used to circumvent the statute's requirements. *Id.* See, *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974) (Sunshine Law is to be construed "so as to frustrate all evasive devices"). For example, in *State v. Foster*, 12 F.L.W. Supp. 1194a (Fla. Broward Co. Ct. September 26, 2005), the court rejected the argument that a private breakfast meeting at which the sheriff spoke and city commissioners individually questioned the sheriff but did not direct comments or questions to each other, did not violate the Sunshine Law. The court denied the commissioners’ motion for summary judgment and held that a discussion is subject to the Sunshine Law where there is a common facilitator who is receiving comments from each commissioner in front of other commissioners. Similarly, a public forum that is hosted by a city council member with other council members invited to attend and discuss matters which may foreseeably come before the city council for action is subject to the Sunshine Law. Inf. Op. to Jove, January 12, 2009.

7. **Board members attending meetings of another public board**
The Attorney General has advised that county commissioners who are also members of a regional planning council may take part in council meetings and express their opinions without violating the Sunshine Law. Op. Att'y Gen. Fla. 07-13 (2007). “However, these officials should not discuss or debate these issues with one another outside the Sunshine as either county commissioners or as regional planning council members.” Id. See also, Op. Att'y Gen. Fla. 00-68 (2000) (Sunshine Law does not prohibit city commissioners from attending other city board meetings and commenting on agenda items that may subsequently come before the commission for final action; however, city commissioners attending such meetings may not discuss those issues among themselves).

8. Social events

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. Op. Att'y Gen. Fla. 92-79 (1992). Thus, there is no per se violation of the Sunshine Law for a husband and wife to serve on the same public board or commission so long as they do not discuss board business without complying with the requirements of section 286.011, Florida Statutes. Op. Att'y Gen. Fla. 89-6 (1989).

F. WHAT ARE THE NOTICE AND PROCEDURAL REQUIREMENTS OF THE SUNSHINE LAW?

1. What kind of notice of the meeting must be given?

a. Reasonable notice required

A key element of the Sunshine Law is the requirement that boards subject to the law provide "reasonable notice" of all meetings. See, section 286.011(1), Florida Statutes. Although section 286.011 did not contain an express notice requirement until 1995, many court decisions had stated prior to the statutory amendment that in order for a public meeting to be in essence "public," reasonable notice of the meeting must be given. Hough v. Stembridge, 278 So. 2d 288, 291 (Fla. 3d DCA 1973). Accord, Yarbrough v. Young, 462 So. 2d 515, 517 (Fla. 1st DCA 1985). Notice is required even though meetings of the board are "of general knowledge" and are not conducted in a closed door manner. TSI Southeast, Inc. v. Royals, 588 So. 2d 309 (Fla. 1st DCA 1991). And see, Baynard v. City of Chiefland, No. 38-2002-CA-00078 (Fla. 8th Cir. Ct. July 8, 2003) (reasonable notice required even if subject of meeting is "relatively unimportant").

The type of notice that must be given is variable, however, 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, an agency must give notice at such time and in such a manner as will enable interested members of the public to
attend the meeting. Ops. Att'y Gen. Fla. 04-44 (2004) and 80-78 (1980). Cf., Lyon v. Lake County, 765 So. 2d 785 (Fla. 5th DCA 2000) (where county attorney provided citizen with "personal due notice" of a committee meeting and its function, it would be "unjust to reward" the citizen by concluding that a meeting lacked adequate notice because the newspaper advertisement failed to correctly name the committee); and Lozman v. City of Riviera Beach, No. 502008CA027882 (Fla. 15th Cir. Ct. December 8, 2010), per curiam affirmed, 79 So. 3d 36 (Fla. 4th DCA 2012) (no violation of Sunshine Law where notice of special meeting held on Monday September 15 was posted at city hall and faxed to the media on Friday September 12, and members of the public [including the media] attended the meeting).

b. Notice requirements when quorum not present or when meeting adjourned to a later date

Reasonable public notice is required for all meetings subject to the Sunshine Law. Thus, notice is required for meetings between members of a public board even though a quorum is not present. Ops. Att'y Gen. Fla. 71-346 (1971) and 90-56 (1990). If a meeting is to be adjourned and reconvened later to complete the business from the agenda of the adjourned meeting, the second meeting should also be noticed. Op. Att'y Gen. Fla. 90-56 (1990).

c. Effect of notice requirements imposed by other statutes, codes or ordinances

The Sunshine Law only requires that reasonable public notice be given. As stated above, the type of notice required is variable and will depend upon the circumstances. A public agency, however, may be subject to additional notice requirements imposed by other statutes, charter or code. In such cases, the requirements of that statute, charter, or code must be strictly observed. Inf. Op. to Michael Mattimore, February 6, 1996.

For example, a board or commission subject to Chapter 120, Florida Statutes, the Administrative Procedure Act, must comply with the notice requirements of that act. See, e.g., section 120.525, Florida Statutes.

d. Notice requirements when board acting as quasi-judicial body or taking action affecting individual rights

Section 286.0105, Florida Statutes, requires:

Each board, commission, or agency of this state or of any political subdivision thereof shall include in the notice of any meeting or hearing, if notice of the meeting or hearing is required, of such board, commission, or agency, conspicuously on such notice, the advice that, if a person
decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Where a public board or commission acts as a quasi-judicial body or takes official action on matters that affect individual rights of citizens, in contrast with the rights of the public at large, the board or commission is subject to the requirements of section 286.0105, Florida Statutes. Op. Att'y Gen. Fla. 81-06 (1981).

2. **Does the Sunshine Law require that an agenda be made available prior to board meetings or restrict the board from taking action on matters not on the agenda?**

The Sunshine Law does not mandate that an agency provide notice of each item to be discussed via a published agenda. *Hough v. Stembridge*, 278 So. 2d 288 (Fla. 3d DCA 1973). And see, *Yarbrough v. Young*, 462 So. 2d 515 (Fla. 1st DCA 1985) (posted agenda unnecessary); and *Law and Information Services, Inc. v. City of Riviera Beach*, 670 So. 2d 1014, 1016 (Fla. 4th DCA 1996) ("[W]ether 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"). See, Inf. Op. to Mattimore, February 6, 1996 (notice of each item to be discussed at public meeting is not required under section 286.011, Florida Statutes, although other statutes, codes, or rules, such as Chapter 120, Florida Statutes, may impose such a requirement).

Thus, while Florida courts have recognized that notice of public meetings is a mandatory requirement of the Government in the Sunshine Law, the preparation of an agenda that reflects every issue that may come before the governmental entity at a noticed meeting is not. Op. Att'y Gen. Fla. 03-53 (2003). Therefore, the Sunshine Law does not prohibit a city commission from adding additional items to the agenda at a regularly noticed meeting and taking formal action on the added items. *Id*. And see, *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1288 (Fla. 2010) (Sunshine Law does not prohibit use of consent agenda procedure). However, the Attorney General's Office has advised a commission to "postpone formal action on controversial matters coming before the board at a meeting where the public has not been given notice that such an issue will be discussed." Op. Att'y Gen. Fla. 03-53 (2003).

3. **Does the Sunshine Law limit where meetings of a public board or commission may be held?**

a. Out-of-town meetings
The courts have recognized that the mere fact that a meeting is held in a public room does not make it public within the meaning of the Sunshine Law. *Bigelow v. Howze*, 291 So. 2d 645, 647-648 (Fla. 2d DCA 1974). For a meeting to be "public," the public must be given advance notice and provided with a reasonable opportunity to attend. *Id.* Accordingly, a school board workshop held outside county limits over 100 miles away from the board's headquarters violated the Sunshine Law where the only advantage to the board resulting from the out-of-town gathering (elimination of travel time and expense due to the fact that the board members were attending a conference at the site) did not outweigh the interests of the public in having a reasonable opportunity to attend. *Rhea v. School Board of Alachua County*, 636 So. 2d 1383 (Fla. 1st DCA 1994). *And see*, Ops. Att'y Gen. Fla. 08-01 (2008) and 03-03 (2003) (municipality may not hold commission meetings at facilities outside its boundaries). See now section 166.0213, Florida Statutes, authorizing certain meetings outside municipal boundaries).

b. Meetings at facilities that discriminate or unreasonably restrict access prohibited

Section 286.011, Florida Statutes, prohibits boards or commissions subject to its provisions from holding their 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. Section 286.011(6), Florida Statutes. Thus, a police pension board should not hold its meetings in a facility where the public has limited access and where there may be a "chilling" effect on the public's willingness to attend by requiring the public to provide identification, to leave the such identification while attending the meeting and to request permission before entering the room where the meeting is held. Op. Att'y Gen. Fla. 96-55 (1996). The Attorney General's Office has also expressed concerns about holding a public meeting in a private home in light of the possible "chilling effect" on the public’s willingness to attend. See, Inf. Op. to Galloway, August 21, 2008.

If a huge public turnout is expected for a particular issue and the largest available public meeting room cannot accommodate all of those who are expected to attend, the use of video technology (e.g. a television screen outside the meeting room) may be appropriate. *See Kennedy v. St. Johns River Water Management District*, No. 2009-0441-CA (Fla. 7th Cir. Ct. September 27, 2010), *per curiam affirmed*, 84 So. 3d 331 (Fla. 5th DCA 2011) (even though not all members of the public were able to enter the meeting room, board did not violate the Sunshine Law when it held a meeting at the board’s usual meeting place and in the largest available room; the court noted, however, that the board set up a computer with external speakers so that those who were not able to enter the meeting room could view and hear the proceedings).

c. Inspection or fact-finding trips

The Sunshine Law does not prohibit *advisory* boards from conducting inspection trips provided that the board members do not discuss matters which may come before
the board for official action. See, Bigelow v. Howse, 291 So. 2d 645 (Fla. 2d DCA 1974). See also, Op. Att'y Gen. Fla. 02-24 (2002) (two or more members of an advisory group created by a city code to make recommendations to the city council or planning commission on proposed development may conduct vegetation surveys without subjecting themselves to the notice and minutes requirements of the Sunshine Law, provided that they do not discuss among themselves any recommendations the committee may make to the council or planning commission, or comments on the proposed development that the committee may make to city officials).

However, the exception to the Sunshine Law for “fact-finding” missions does not apply to boards with the “ultimate decision-making authority.” See, Finch v. Seminole County School Board, 995 So. 2d 1068, 1073 (Fla. 5th DCA 2008), in which the court held that a school board violated the Sunshine Law when board members, together with several school officials and two members of the media, took a bus tour of neighborhoods affected by a proposed rezoning even though there was no open discussion regarding the rezoning; no one either discussed or expressed a preference for any plan; and no decisions were made. Since the board was the ultimate decision-making body, the bus tour constituted a violation of the Sunshine Law.

4. Can restrictions be placed on the public’s attendance at, or participation in, a public meeting?

a. Exclusion of certain members of the public

The term "open to the public" as used in the Sunshine Law means open to all who choose to attend. Op. Att'y Gen. Fla. 99-53 (1999). A board's request that certain members of the public "voluntarily" leave the room during portions of a public meeting is not authorized. See Port Everglades Authority v. International Longshoremen's Association, Local 1922-1, 652 So. 2d 1169 (Fla. 4th DCA 1995). Cf. Ribaya v. Board of Trustees of the City Pension Fund for Firefighters and Police Officers in City of Tampa, 162 So. 3d 348, 356 (Fla. 2d DCA 2015) (although there appears to be no case law "squarely resolving" whether a wrongful exclusion of one person would void all actions taken at the meeting, “there is legal support for that proposition”).

Staff of a public agency clearly are members of the public as well as employees of the agency; they cannot, therefore, be excluded from public meetings. Op. Att'y Gen. Fla. 79-01 (1979). Section 286.011, Florida Statutes, however, does not preclude the reasonable application of ordinary personnel policies, for example, the requirement that annual leave be used to attend meetings, provided that such policies do not frustrate or subvert the purpose of the Sunshine Law. Id.

b. Cameras and tape recorders

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 a public meeting may be adopted by the board or commission. However, a board may
not ban videotaping of an otherwise public meeting. *Pinellas County School Board v. Suncam, Inc.*, 829 So. 2d 989 (Fla. 2d DCA 2002). Similarly, a rule or policy that prohibits nondisruptive or silent tape recording devices at public meetings is invalid. Op. Att'y Gen. Fla. 77-122 (1977).

c. **Identification**

A city may not require persons wishing to attend public meetings to provide identification as a condition of attendance. Op. Att'y Gen. Fla. 05-13 (2005). This is not to say that an agency may not impose certain security measures on members of the public entering a public building, such as requiring the public to go through metal detectors. *Id.*

d. **Public comment**

Prior to the adoption of section 286.0114, Florida Statutes (2013), Florida courts had determined that section 286.011, Florida Statutes, establishes a right to attend public board meetings, but does not provide a right to be heard. See *Herrin v. City of Deltona*, 121 So. 3d 1094, 1097 (Fla. 5th DCA 2013) (phrase “open to the public” as used in the Sunshine Law means that “meetings must be “properly noticed and reasonably accessible to the public, not that the public has the right to be heard at such meetings”). See also *Keesler v. Community Maritime Park Associates*, 32 So. 3d 659 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1289 (Fla. 2010); and *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1288 (Fla. 2010).

However, as noted in the *Herrin* case, section 286.0114, Florida Statutes (2013), now mandates, subject to specified exceptions, that the public be given “a reasonable opportunity to be heard on a proposition before a board or commission.” The opportunity to be heard does not have to occur at the same meeting at which the board or commission takes official action if the “opportunity occurs at a meeting that is during the decisionmaking process and is within reasonable proximity in time before the meeting at which the board or commission takes the official action.” Section 286.0114(2), Florida Statutes.

The terms “proposition” or “official action” are not defined in the statute, nor is there a distinction between official actions taken at a formal meeting versus an informal setting such as a workshop. Inf. Op. to Jacquot, April 25 2014. “In light of the purpose of the statute to allow public participation during the decisionmaking process on a proposition, it should be liberally construed to facilitate that purpose.” *Id.*

Boards are not prohibited from “maintaining orderly conduct or proper decorum in a public meeting.” In addition, boards are authorized to adopt specified rules or policies governing the opportunity to be heard *i.e.*, time limits for speakers; procedures for designating a representative of a group or faction to address the board rather than all members of the group or faction; forms to indicate a speaker’s position on a matter; and designation of a specified period of time for public comment. Section 286.0114(4),
Florida Statutes.

While section 286.0114(6), Florida Statutes, authorizes a circuit court to issue injunctions for the purpose of enforcing the statute, section 286.0114(8), Florida Statutes, states that an action taken by a board or commission which is found to be in violation of section 286.0114, Florida Statutes, is not void as a result of that violation.

5. **Must written minutes be kept of all sunshine meetings?**

Section 286.011(2), Florida Statutes, specifically requires that minutes of a meeting of a public board or commission be promptly recorded and open to public inspection. Thus, a city violated the Sunshine Law when it failed to provide public access to minutes until after they had been approved by the city commission. *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1288 (Fla. 2010).

The minutes required to be kept for "workshop" meetings are no different than those required for any other meeting of a public board or commission. Op. Att'y Gen. Fla. 08-65 (2008). *And see, Lozman v. City of Riviera Beach*, No. 502007CA007552XXXXMBAN (Fla. 15th Cir. Ct. June 9, 2009), *per curiam affirmed*, 46 So. 3d 573 (Fla. 4th DCA 2010) (minutes required to be kept for city council agenda review meetings).

While tape recorders may be used to record the proceedings before a public body, written minutes of the meeting must also be taken and promptly recorded. See, Op. Att'y Gen. Fla. 75-45 (1975). Similarly, while a board may archive the full text of all workshop discussions conducted on the Internet, written minutes of these workshops must also be prepared and promptly recorded. Op. Att'y Gen. Fla. 08-65 (2008).

Draft minutes of a board meeting may be circulated to individual board members for corrections and studying prior to approval by the board, so long as any changes, corrections, or deletions are discussed and adopted during the public meeting when the board adopts the minutes. Op. Att'y Gen. Fla. 02-51 (2002).

6. **In addition to minutes, does the Sunshine Law also require that meetings be transcribed or tape recorded?**

Minutes of Sunshine Law meetings need not be verbatim transcripts of the meetings; rather the use of the term "minutes" in section 286.011, Florida Statutes, contemplates a brief summary or series of brief notes or memoranda reflecting the events of the meeting. Op. Att'y Gen. Fla. 82-47 (1982). However, an agency is not prohibited from using a written transcript of the meeting as the minutes, if it chooses to do so. Inf. Op. to Fulwider, June 14, 1993.

There is no requirement that tape recordings be made by the public board or commission at each public meeting. However, once made, such recordings are public
records and their retention is governed by the Public Records Act and the schedules established by the Division of Library and Information Services of the Department of State. Op. Att'y Gen. Fla. 86-21 (1986).

7. **May members of a public board vote by written or secret ballot?**

Board members are not prohibited from using written ballots to cast a vote as long as the votes are made openly at a public meeting, the name of the person who voted and his or her selection are written on the ballot, and the ballots are maintained and made available for public inspection in accordance with the Public Records Act. Op. Att'y Gen. Fla. 73-344 (1973).

By contrast, a secret ballot violates the Sunshine Law. See, Op. Att'y Gen. Fla. 73-264 (1973) (members of a personnel board may not vote by secret ballot during a hearing concerning a public employee). *Accord*, Ops. Att'y Gen. Fla. 72-326 (1972) and 71-32 (1971) (board may not use secret ballots to elect the chairman and other officers of the board). Thus, a judge found that a board violated the Sunshine Law when the board members’ individual written votes for each applicant were not announced at the public meeting. According to the court, “[t]he fact that the ballots are preserved as public records available for public inspection does not satisfy the requirement of openness.” *Schweickert v. Citrus County Port Authority*, No. 12-CA-1339 (Fla. 5th Cir. Ct. September 30, 2013).

G. **WHAT ARE THE CONSEQUENCES IF A PUBLIC BOARD OR COMMISSION FAILS TO COMPLY WITH THE SUNSHINE LAW?**

1. **Criminal penalties**

Any member of a board or commission or of any state agency or authority of a county, municipal corporation, or political subdivision who *knowingly* violates the Sunshine Law is guilty of a misdemeanor of the second degree. Section 286.011(3)(b), Florida Statutes. Conduct which occurs outside the state which constitutes a knowing violation of the Sunshine Law is a second degree misdemeanor. Section 286.011(3)(c), Florida Statutes. Such violations are prosecuted in the county in which the board or commission normally conducts its official business. Section 910.16, Florida Statutes. The criminal penalties apply to members of advisory councils subject to the Sunshine Law as well as to members of elected or appointed boards. Op. Att'y Gen. Fla. 01-84 (2001) (school advisory council members).

2. **Removal from office**

When a method for removal from office is not otherwise provided by the Constitution or by law, the Governor may suspend an elected or appointed public officer who is indicted or informed against for any misdemeanor arising directly out of his
official duties. Section 112.52, Florida Statutes. If convicted, the officer may be removed from office by executive order of the Governor. A person who pleads guilty or nolo contendere or who is found guilty is, for purposes of section 112.52, Florida Statutes, deemed to have been convicted, notwithstanding the suspension of sentence or the withholding of adjudication. Cf., section 112.51, Florida Statutes, and article IV, section 7, Florida Constitution.

3. **Noncriminal infractions**


4. **Attorney's fees**

Reasonable attorney's fees will be assessed against a board or commission found to have violated section 286.011, Florida Statutes. Such fees may be assessed against the individual members of the board except in those cases where the board sought, and took, the advice of its attorney, such fees may not be assessed against the individual members of the board. Section 286.011(4), Florida Statutes.

Section 286.011(4) also authorizes an award of appellate fees if a person successfully appeals a trial court order denying access. See, *School Board of Alachua County v. Rhea*, 661 So. 2d 331 (Fla. 1st DCA 1995), review denied, 670 So. 2d 939 (Fla. 1996).

5. **Civil actions for injunctive or declaratory relief**

Section 286.011(2), Florida Statutes, states that the circuit courts have jurisdiction to issue injunctions upon application by any citizen of this state. The burden of prevailing in such actions has been significantly eased by the judiciary in sunshine cases. While normally irreparable injury must be proved by the plaintiff before an injunction may be issued, in Sunshine Law cases the *mere showing* that the law has been violated constitutes "irreparable public injury." *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974); *Times Publishing Company v. Williams*, 222 So. 2d 470 (Fla. 2d DCA 1969), disapproved in part on other grounds, *Neu v. Miami Herald Publishing Company*, 462 So. 2d 821 (Fla. 1985). And see, *Lozman v. City of Riviera Beach*, No. 502007CA00752XXXMBAN (Fla. 15th Cir. Ct. June 9, 2009) *per curiam affirmed*, 46 So. 3d 573 (Fla. 4th DCA 2010) (injunctive relief to enjoin city from future violations of the Sunshine Law due to a failure to record minutes of certain meetings is "appropriate" in light of City's past conduct and consistent refusal to record minutes even after being advised to do so by the City Attorney and also because the City "has
continuously taken the legal position that local governments are not required by the Sunshine Law to record minutes.

Although a court cannot issue a blanket order enjoining any violation of the Sunshine Law on a showing that it was violated in particular respects, a court may enjoin a future violation that bears some resemblance to the past violation. *Port Everglades Authority v. International Longshoremen's Association, Local 1922-1*, 652 So. 2d 1169, 1173 (Fla. 4th DCA 1995). The future conduct must be "specified, with such reasonable definiteness and certainty that the defendant could readily know what it must refrain from doing without speculation and conjecture." *Id.*, quoting from *Board of Public Instruction v. Doran*, 224 So. 2d 693, 699 (Fla. 1969).

6. **Validity of action taken in violation of the Sunshine Law and subsequent corrective action**

Section 286.011, Florida Statutes, provides that no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting. “Therefore, where officials have violated section 286.011, the official action is void ab initio.” *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010). And see, *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974); *Blackford v. School Board of Orange County*, 375 So. 2d 578 (Fla. 5th DCA 1979) (resolutions made during meetings held in violation of section 286.011, Florida Statutes, had to be re-examined and re-discussed in open public meetings); *TSI Southeast, Inc. v. Royals*, 588 So. 2d 309 (Fla. 1st DCA 1991) (contract for sale and purchase of real property voided because board failed to properly notice the meeting under section 286.011, Florida Statutes); and *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1288 (Fla. 2010) (city could have cured Sunshine Law violation by reconsidering the matter, but did not; accordingly, action taken in violation of the law was void)

Where, however, a public board or commission does not merely perfunctorily ratify or ceremoniously accept at a later open meeting those decisions which were made at an earlier secret meeting but rather takes "independent final action in the sunshine," the decision of the board or commission will not be disturbed. *Tolar v. School Board of Liberty County*, 398 So. 2d 427, 429 (Fla. 1981). See, *Finch v. Seminole County School Board*, 995 So. 2d 1068, 1073 (Fla. 5th DCA 2008) (school board remedied inadvertent violation of the Sunshine Law when it subsequently held full, open and independent public hearings prior to adopting a rezoning plan) and *Sarasota Citizens for Responsible Government v. City of Sarasota*, *supra* (any possible violations that occurred when county commissioners circulated e-mails among each other were cured by subsequent public meetings). Cf., *Zorc v. City of Vero Beach*, 722 So. 2d 891, 903 (Fla. 4th DCA 1998) (meeting did not cure the Sunshine defect because it was not a "full, open public hearing convened for the purpose of enabling the public to express its views and participate in the decision-making process"); and *Bert Fish Foundation v. Southeast Volusia Hospital District*, No. 2010-20801-CINS (Fla. 7th Cir. Ct. February 24, 2011) (series of public meetings did not "cure" Sunshine Law
violations that resulted from 21 closed door meetings over 16 months; “[t]here was so much darkness for so long, that a giant infusion of sunshine might have been too little or too late”).

Moreover, “even when an illicit action is ‘cured” it does not absolve a public body of its responsibility for violating the Sunshine Law in the first instance; it simply provides a way to salvage a void act by reconsidering it in Sunshine.” Anderson v. City of St. Pete Beach, 161 So. 3d 548 (Fla. 2d DCA 2014).

7. Damages

“The only remedies available pursuant to the Sunshine Act are a declaration of the wrongful action as void and reasonable attorney’s fees.” Dascott v. Palm Beach County, 988 So. 2d 47, 49 (Fla. 4th DCA 2008), review denied, 6 So. 3d 51 (Fla. 2009). Accordingly, an employee who prevailed in a lawsuit alleging that her termination violated the Sunshine Law “may not recover the equitable relief of back pay because money damages are not a remedy provided for by the Act.” Id.

II. PUBLIC RECORDS

A. WHAT IS A PUBLIC RECORD WHICH IS OPEN TO INSPECTION?

1. What materials are public records?

Section 119.011(12), 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.

The Florida 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 and Associates, Inc., 379 So. 2d 633, 640 (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. Florida Power & Light Company, 372 So. 2d 420 (Fla. 1979). Accordingly, "the form of the record is irrelevant; the material issue is whether the record is made or received by the public agency in connection with the transaction of official business.” Op. Att'y Gen. Fla. 04-33 (2004).

2. When are notes or nonfinal drafts of agency proposals
subject to Chapter 119, Florida Statutes?

There is no "unfinished business" exception to the public inspection and copying requirements of Chapter 119, Florida Statutes. If the purpose of a document prepared in connection with the official business of a public agency is to perpetuate, communicate, or formalize knowledge, then it is a public record regardless of whether it is in final form or the ultimate product of an agency. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633 (Fla. 1980). See also, *Warden v. Bennett*, 340 So. 2d 977 (Fla. 2d DCA 1976) (working papers used in preparing a college budget were public records).

Accordingly, any agency document, however prepared, if 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.

In each of these cases, the fact that the records are part of a preliminary process does not detract from their essential character as public records. See, *Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc.*, 718 So. 2d 227, 229 (Fla. 3d DCA 1998) (book selection forms completed by state university instructors and furnished to campus bookstore “are made in connection with official business, for memorialization and communication purposes[,] [t]hey are public records”); and *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1288 (Fla. 2010) (canvassing board minutes constitute final work product of the Board, not a preliminary draft or note; therefore, city violated public records law by refusing to produce minutes until after approval by the city commission). It follows then that such records are subject to disclosure unless the Legislature has specifically exempted the documents from inspection or has otherwise expressly acted to make the records confidential. See, for example, section 119.071(1)(d), Florida Statutes, providing a limited work product exemption for agency attorneys.

Similarly, so-called “personal notes” can constitute public records if they are intended to communicate, perpetuate or formalize knowledge of some type. For example, in *Miami Herald Media Company v. Sarnoff*, 971 So. 2d 915 (Fla. 3d DCA 2007), the court held that a memorandum prepared by a city commissioner after a meeting with a former city official, summarizing details of what was said and containing alleged factual information about possible criminal activity, was a public record subject to disclosure. The court determined that the memorandum was not a draft or a note containing mental impressions that would later form part of a government record, but rather formalized and perpetuated his final knowledge gained at the meeting. See also Op. Att’y Gen. Fla. 05-23 (2005).

However, "under chapter 119 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.'" *Justice Coalition v. The First District Court of Appeal*
Judicial Nominating Commission, 823 So. 2d 185, 192 (Fla. 1st DCA 2002). Accord, Coleman v. Austin, 521 So. 2d 247 (Fla. 1st DCA 1988), holding that preliminary handwritten notes prepared by agency attorneys and intended only for the attorneys' own personal use are not public records;

More recently, the Attorney General advised that handwritten 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, are not public records “if the notes have not been transcribed or shown to others and were not intended to perpetuate, communicate, or formalize knowledge.” Op. Att’y Gen. Fla. 10-55 (2010).

3. When are records made or received “in connection with the transaction of official business?”

The determination as to whether certain records constitute “public records” can be difficult if the records are produced by a public officer or employee on government equipment but are “personal” in nature. The Florida Supreme Court has ruled that private e-mail stored in government computers does not automatically become a public record by virtue of that storage. State v. City of Clearwater, 863 So. 2d 149 (Fla. 2003). "Just as an agency cannot circumvent the Public Records Act by allowing a private entity to maintain physical custody of documents that fall within the definition of 'public records,' . . . private documents cannot be deemed public records solely by virtue of their placement on an agency-owned computer." Id. at 154. Accord, Bent v. State, 46 So. 3d 1047 (Fla. 4th DCA 2010) (sound recordings made by sheriff’s office of personal telephone calls between minors in jail awaiting trial and third parties are not public records when contents of the phone calls do not involve criminal activity or a security breach); Media General Operations, Inc. v. Feeney, 849 So. 2d 3 (Fla. 1st DCA 2003) (cellular phone records of private calls of staff employees do not constitute official business of the Florida House of Representatives). And see Butler v. City of Hallandale Beach, 68 So. 3d 278 (Fla. 4th DCA 2011) (e-mail sent by mayor from her personal account using her personal computer and blind copied to friends and supporters did not constitute a public record because the e-mail was not made pursuant to law or ordinance or in connection with the transaction of official business).

The Clearwater decision does not mean, however, that all records relating to personal matters which are found in agency files are outside the scope of the Public Records Act. As the Clearwater Court noted, the personal e-mails involved in that decision were not e-mails "that may have been isolated by a government employee whose job required him or her to locate employee misuse of government computers." State v. City of Clearwater, at 151n.2.

For example, if a state inspector general is reviewing allegations of misuse of agency equipment for private purposes, the personal emails obtained by the inspector general for his or her investigation are public records and subject to disclosure in the absence of statutory exception. And see, Miami-Dade County v. Professional Law Enforcement Association, 997 So. 2d 1289 (Fla. 3d DCA 2009), concluding that when the county aviation unit’s written procedures required pilots to maintain a personal flight log, the logs were subject to the Public Records Act. "The officers are thus paid by the
County to make these logbook entries, and the entries are made ‘in connection with the transaction of official business’ of the aviation unit;’ therefore, “[t]he entries are readily distinguishable from the purely personal e-mails at issue in State v. City of Clearwater [citation omitted].” Id. at 1290-1291. See also, Bill of Rights, Inc. v. City of New Smyrna Beach, No. 2009-20218-CINS (Fla. 7th Cir. Ct. April 8, 2010) (billing documents regarding personal calls made and received by city employees on city-owned or city-leased cellular telephones are public records, when those documents are received and maintained in connection with the transaction of official business; ‘and, the ‘official business’ of a city includes paying for telephone service and obtaining reimbursement from employees for personal calls’); and Op. Att’y Gen. Fla. 09-19 (2009) (because the creation of a city Facebook page must be for a municipal, not private purpose, the “placement of material on the city’s page would presumably be in furtherance of such purpose and in connection with the transaction of official business and thus subject to the provisions of Chapter 119, Florida Statutes.”).

B. WHAT AGENCIES ARE SUBJECT TO THE PUBLIC RECORDS ACT?

Section 119.011(2), Florida Statutes, defines "agency" to include:

any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

Article I, section 24, Florida Constitution, establishes a constitutional right of access to any public record 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, except those records exempted by law pursuant to Article I, section 24, Florida Constitution, or specifically made confidential by the Constitution. This right of access to public records applies to the legislative, executive, and judicial branches of government; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or by the Constitution. However, although a right of access exists under the Constitution to all three branches of government, the Public Records Act, as a legislative enactment, does not apply to the Legislature or the judiciary. See, Locke v. Hawkes, 595 So. 2d 32 (Fla. 1992).

1. Advisory boards

The definition of "agency" for purposes of Chapter 119, Florida Statutes, is not limited to governmental entities. A "public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency" is also subject to the requirements of the Public Records Act. See also, Article I, section 24, Florida Constitution, providing that the constitutional right of access to public records extends to

1.35
"any public body, officer, or employee of the state, or persons acting on their behalf...." (e.s.)

2. Private organizations

A more complex question is presented when a private corporation or entity provides services for a governmental body. The term "agency" as used in the Public Records Act includes private entities "acting on behalf of any public agency." Section 119.011(2), Florida Statutes. And see s. 119.0701, F.S., mandating that all agency contracts for services with "contractors" must contain specific provisions requiring the contractor to comply with public records laws, including retention and public access requirements. The term “contractor” is defined to mean “an individual, partnership, corporation or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2), [F.S.].” (e.s.) See Op. Att’y Gen. Fla. 14-06 (2014).

The Florida Supreme Court has stated that this broad definition of "agency" ensures that a public agency cannot avoid disclosure by contractually delegating to a private entity that which would otherwise be an agency responsibility. News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc., 596 So. 2d 1029 (Fla. 1992). Cf., Booksmart Enterprises, Inc. v. Barnes & Noble College Bookstores, Inc., 718 So. 2d 227, 229 n.4 (Fla. 3d DCA 1998), review denied, 729 So. 2d 389 (Fla. 1999) (private company operating college bookstores was an "agency" as defined in section 119.011[2], Florida Statutes, "notwithstanding the language in its contract with the universities that purports to deny any agency relationship").

The fact that an entity is incorporated as a nonprofit corporation is not dispositive as to its status under the Public Records Act, but rather the issue is whether the entity is “acting on behalf of” a public agency. The Attorney General's Office has issued numerous opinions advising that if a nonprofit entity is established by law or by a governmental entity, it is subject to Chapter 119 disclosure requirements. See, Op. Att'y Gen. Fla. 94-34 (1994) (Pace Property Finance Authority, Inc., created as a Florida nonprofit corporation by Santa Rosa County as an instrumentality of the county to provide assistance in the funding and administration of certain governmental programs).

a. Receipt of public funds by private entity not dispositive

A private corporation does not act "on behalf of" a public agency merely by entering into a contract to provide professional services to the agency. News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc., supra. And see, Weekly Planet, Inc. v. Hillsborough County Aviation Authority, 829 So. 2d 970 (Fla. 2d DCA 2002) (fact that private development is located on land the developer leased from a governmental agency does not transform the leases between the developer and other private entities into public records).

Similarly, the receipt of public funds, standing alone, is not dispositive of the organization's status for purposes of Chapter 119, Florida Statutes. See, Sarasota Herald-Tribune Company v. Community Health Corporation, Inc., 582 So. 2d 730 (Fla.
2d DCA 1991), in which the court noted that the mere provision of public funds to the private organization is not an important factor in this analysis, although the provision of a substantial share of the capitalization of the organization is important. See also, *Times Publishing Company v. Acton*, No. 99-8304 (Fla. 13th Cir. Ct. November 5, 1999) (attorneys retained by individual county commissioners in a criminal matter were not "acting on behalf of" a public agency so as to become subject to the Public Records Act, even though the board of county commissioners subsequently voted to pay the legal expenses in accordance with a county policy providing for reimbursement of legal expenses to individual county officers who successfully defend criminal charges filed against them arising out of the performance of their official duties).

b. Application of Chapter 119, Florida Statutes, to private entities contracting with public agencies

The case law has established "two general sets of circumstances" when records belonging to a private entity must be produced as public records. See, *Weekly Planet, Inc. v. Hillsborough County Aviation Authority*, 829 So. 2d 970, 974 (Fla. 2d DCA 2002) and *B & S Utilities, Inc. v. Baskerville-Donovan, Inc.*, 988 So. 2d 17 (Fla. 1st DCA 2008); *County of Volusia v. Emergency Communications Network, Inc.*, 39 So. 3d 1280 (Fla. 5th DCA 2010). First, when a public entity contracts with a private entity to provide services to facilitate the agency's performance of its duties and the "totality of factors" indicates a significant level of involvement by the public agency. Second, when a public entity delegates a statutorily authorized function to a private entity. Each of these situations is discussed below.

(1) Contract to provide services and the "totality of factors" test

Recognizing that "the statute provides no clear criteria for determining when a private entity is 'acting on behalf of' a public agency," the Supreme Court adopted a "totality of factors" approach to use as a guide for evaluating whether a private entity providing services to a public agency is subject to Chapter 119, Florida Statutes. *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, supra at 1031. *And see, Wells v. Aramark Food Service Corporation*, 888 So. 2d 134 (Fla. 4th DCA 2004) (trial judge should have applied totality of factors analysis rather than denying petition for writ of mandamus seeking to require Aramark to provide a copy of the food service contract between it and the Department of Corrections).

The factors listed by the Supreme Court include the following:

1) the level of public funding;
2) commingling of funds;
3) whether the activity was conducted on publicly-owned property;
4) whether the contracted services are an integral part of the public agency's chosen decision-making process;
5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform;
6) the extent of the public agency's involvement with, regulation of, or
control over the private entity;
7) whether the private entity was created by the public agency;
8) whether the public agency has a substantial financial interest in the private entity;
9) for whose benefit the private entity is functioning.

(2) Delegation of statutorily authorized function to private entity

"[W]hen a public entity delegates a statutorily authorized function to a private entity, the records generated by the private entity’s performance of that duty become public records." Weekly Planet, Inc. v. Hillsborough County Aviation Authority, 829 So. 2d 970, 974 (Fla. 2d DCA 2002).

As stated previously, the mere fact that a private entity is under contract with, or receiving funds from, a public agency is not sufficient, standing alone, to bring that agency within the scope of the Public Records Act. See, Stanfield v. Salvation Army, 695 So. 2d 501, 503 (Fla. 5th DCA 1997) (contract between Salvation Army and county to provide services does not in and of itself subject the organization to Chapter 119 disclosure requirements).

However, there is a difference between a party contracting with a public agency to provide services to the agency and a contracting party which provides services in place of the public body. News-Journal Corporation v. Memorial Hospital-West Volusia, Inc., 695 So. 2d 418 (Fla. 5th DCA 1997), approved, 729 So. 2d 373 (Fla. 1999). Stated another way, business records of entities which merely provide services for an agency to use (such as legal professional services, for example) are probably not subject to the open government laws. Id. But, if the entity contracts to relieve the public body from the operation of a public obligation (such as operating a jail or providing fire protection) the open government laws do apply. Id.

Thus, in B & S Utilities, Inc. v. Baskerville-Donovan, Inc., 988 So. 2d 17 (Fla. 1st DCA 2008), review denied, 4 So. 3d 1220 (Fla. 2009), the court held that a private engineering firm which contracted to provide engineering services for a city and acted de facto as the city’s engineer, was an “agency” subject to Chapter 119, Florida Statutes. And see, Dade Aviation Consultants v. Knight Ridder, Inc., 800 So. 2d 302 (Fla. 3d DCA 2001) (a consortium of private businesses created to manage a massive renovation of an airport is an "agency" for purposes of the Public Records Act because it was created for and had no purpose other than to work on the airport contract; "when a private entity undertakes to provide a service otherwise provided by the government, the entity is bound by the Act, as the government would be").

However, the trial judge erred when he used the “delegation” test instead of the “totality of factors” test established in Schwab to determine that a nonprofit entity was an “agency” based on the entity’s contract with the county to perform economic development services because there was not a “clear, compelling, complete” delegation of a governmental function to the entity. See Economic Development Commission v. Ellis, 178 So. 3d 118 (Fla. 5th DCA 2015).
c. Application of Chapter 119 to private entity that has been delegated authority to keep certain records

If a public agency has delegated its responsibility to maintain records necessary to perform its functions, such records will be deemed accessible to the public. Op. Att'y Gen. Fla. 98-54 (1998) (registration and disciplinary records stored in a computer database maintained by a national securities association which are used by the Department of Banking and Finance in licensing and regulating securities dealers doing business in Florida are public records). See also, Harold v. Orange County, 668 So. 2d 1010 (Fla. 5th DCA 1996) (where a county hired a private company to be the construction manager on a renovation project and delegated to the company the responsibility of maintaining records necessary to show compliance with a "fairness in procurement ordinance," the company's records for this purpose were public records).

3. Officers-elect

Section 119.035, Florida Statutes, requires an "officer-elect" [defined for purposes of that section to mean the Governor, the Lieutenant Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture] to adopt and implement reasonable measures to ensure compliance with the public records obligations set forth in chapter 119, Florida Statutes. Cf., section 286.011(1), Florida Statutes, providing that meetings subject to the Sunshine Law include "meetings with or attended by any person elected to such board or commission, but who has not yet taken office. . . ."

C. WHAT KINDS OF AGENCY RECORDS ARE SUBJECT TO THE PUBLIC RECORDS ACT?

1. Electronic records

In 1982, the Fourth District Court of Appeal stated that 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 . . . ." Seigle v. Barry, 422 So. 2d 63, 65 (Fla. 4th DCA 1982), review denied, 431 So. 2d 988 (Fla. 1983). Thus, the Public Records Act includes computer records as well as paper documents, tape recordings, and other more tangible materials. See, e.g., Op. Att'y Gen. Fla. 98-54 (1998) (applications and disciplinary reports maintained in a computer system operated by a national securities dealers association which are received electronically by state agency for use in licensing and regulating securities dealers doing business in Florida are public records subject to Chapter 119); Op. Att'y Gen. Fla. 91-61 (1991) (computer data software disk is a public record); and Op. Att'y Gen. Fla. 89-39 (1989) (information stored in computer utilized by county commissioners to facilitate and conduct their official business is subject to Chapter 119, Florida Statutes). Cf. Grapski v. Machen, No. 01-2005-CA-4005 J (Fla. 8th Cir. Ct. May 9, 2006), affirmed per curiam, 949 So. 2d 202 (Fla. 1st DCA 2007) (spam or bulk mail received by a public agency does not necessarily constitute a public record).
Thus, electronic public records made or received in the course of official business are governed by the same rule as written documents and other public records -- the records are subject to public inspection unless a statutory exemption exists which removes the records from disclosure. See, *National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201 (Fla. 1st DCA 2009), review denied, 37 So. 3d 848 (Fla. 2010) (public records law is not limited to paper documents but applies to documents that exist only in digital form). Cf., AGO 90-04, stating that a county official is not authorized to assign the county's right to a public record (a computer program developed by a former employee while he was working for the county) as part of a settlement of a lawsuit against the county.

E-mail messages made or received by agency employees in connection with official business are public records and subject to disclosure in the absence of a statutory exemption from public inspection. See, *Rhea v. District Board of Trustees of Santa Fe College*, 109 So. 3d 851, 855 (Fla. 1st DCA 2013), noting that "electronic communications, such as e-mail are covered [by the Public Records Act] just like communications on paper." And see, Op. Att'y Gen. Fla. 07-14 (2007) (e-mails sent by city commissioners in connection with the transaction of official business are public records subject to disclosure even though the e-mails contain undisclosed or "blind" recipients and their e-mail addresses).

Like other public records, e-mail messages are subject to the statutory restrictions on destruction of public records, which require agencies to adopt a schedule for the disposal of records no longer needed. Op. Att'y Gen. Fla. 96-34 (1996). For example, the e-mail communication of factual background information and position papers from one official to another is a public record and should be retained in accordance with the retention schedule for other records relating to performance of the agency's functions and formulation of policy. Op. Att'y Gen. Fla. 01-20 (2001). See, section 257.36(6), Florida Statutes, stating that a public record may be destroyed only in accordance with retention schedules established by the Division of Library and Information Services of the Department of State. Id. Cf., section 668.6076, Florida Statutes (e-mail address public record disclosure statement).

The Attorney General's Office has stated that the placement of material on a city's Facebook page presumably would be in connection with the transaction of official business and thus subject to Ch. 119, F.S. Thus, to the extent that the information on a city's Facebook page constitutes a public record, the city is under an obligation to follow the public records retention schedules established by law. Op. Att'y Gen. Fla. 09-19 (2009). And see Op. Att'y Gen. Fla. 08-07 (2008) (postings relating to city business which are submitted by a city council member to a privately-owned and operated internet website are public records).

In Inf. Op. to Browning, March 17, 2010, the Attorney General's Office advised the Department of State (which is statutorily charged with development of public records retention schedules) that "the same rules that apply to e-mail should be considered for electronic communications including Blackberry PINS, SMS communications (text messaging), MMS communications (multimedia content) and instant messaging conducted by government agencies." In response, the Department of State revised its
records retention schedule to note that text messages may be public records and that retention of text messages could be required depending upon the content of those texts.

The determination as to whether a list or record of accounts which have been blocked from posting to or accessing an elected official’s personal Twitter feed is a public record involves mixed questions of law and fact which cannot be resolved by the Attorney General’s Office. Inf. Op. to Shalley, June 1, 2016. However, if the tweets the public official is sending are public records [because they were sent in connection with the transaction of official business] then a list of blocked accounts, prepared in connection with those public records ‘tweets’ could well be determined by a court to be a public record.” *Id.*

a. Formatting issues

Each agency that maintains a public record in an electronic recordkeeping system shall provide to any person, pursuant to Chapter 119, a copy of any public record in that system which is not exempted by law from public disclosure. Section 119.01(2)(f), Florida Statutes. An agency that maintains a public record in an electronic recordkeeping system must provide a copy of the record in the medium requested by the person making a Chapter 119 demand, if the agency maintains the record in that medium, and the fee charged shall be in accordance with Chapter 119, Florida Statutes. *Id.* Thus, a custodian of public records must, if asked for a copy of a computer software disk used by an agency, provide a copy of the disk in its original format; a typed transcript would not satisfy the requirements of section 119.07(1), Florida Statutes. Op. Att'y Gen. Fla. 91-61 (1991).

However, an agency is not generally required to reformat its records to meet a requestor's particular needs. As stated in *Seigle v. Barry*, the intent of Ch. 119, Florida Statutes, is "to make available to the public information which is a matter of public record, in some meaningful form, not necessarily that which the applicant prefers." 422 So. 2d at 66. Thus, the Attorney General’s Office concluded that a school district was not required to furnish electronic public records in electronic format other than the standard format routinely maintained by the district. Op. Att'y Gen. Fla. 97-39 (1997). *Cf.* Op. Att’y Gen. Fla. 13-07 (2013) (agency not required to allow direct access to its electronic records through a hard drive provided by a requestor, but must allow inspection and copying of the requested records in a manner that protects exempt and confidential information from disclosure).

Despite the general rule, however, the *Seigle* court recognized that an agency may be required to provide access through a specially designed program prepared by or at the expense of the applicant where:

1. available programs do not access all of the public records stored in the computer's data banks; or
2. the information in the computer accessible by the use of available programs would include exempt information necessitating a special
program to delete such exempt items; or

(3) for any reason the form in which the information is proffered does not fairly and meaningfully represent the records; or

(4) the court determines other exceptional circumstances exist warranting this special remedy. 422 So. 2d at 66, 67.

b. Remote access

Section 119.07(2)(a), Florida Statutes, authorizes but does not require agencies to provide remote electronic access to public records. However, unless otherwise required by law, the custodian may charge a fee for remote electronic access, granted under a contractual arrangement with a user, which fee may include the direct and indirect costs of providing such access. Fees for remote electronic access provided to the general public must be in accordance with the provisions of section 119.07(4), Florida Statutes. And see, section 119.07(2)(b), Florida Statutes, which requires the custodian to provide safeguards to protect the records from unauthorized disclosure or alteration.

2. Financial records

Many agencies prepare or receive financial records as part of their official duties and responsibilities. As with other public records, these materials are generally open to inspection unless a specific statutory exemption exists. See, Op. Att'y Gen. Fla. 96-96 (1996) (financial information submitted by harbor pilots in support of a rate increase application is not exempt from disclosure requirements).

a. Bids

Section 119.071(1)(b)2., Florida Statutes, provides an exemption for "sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation" or until such time as the agency provides notice of an intended decision or until 30 days after opening, whichever is earlier. And see, s. 119.071(1)(b)3., Florida Statutes, providing a temporary exemption if an agency rejects all bids, proposals or replies and concurrently provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws it.

b. Budgets

Budgets and working papers used to prepare them are normally subject to inspection. Bay County School Board v. Public Employees Relations Commission, 382 So. 2d 747 (Fla. 1st DCA 1980); Warden v. Bennett, 340 So. 2d 977 (Fla. 2d DCA 1976); City of Gainesville v. State ex rel. International Association of Fire Fighters Local No. 2157, 298 So. 2d 478 (Fla. 1st DCA 1974).

c. Personal financial records

In the absence of statutory exemption, financial information prepared or received
by an agency is usually subject to Chapter 119, Florida Statutes. *See, Wallace v. Guzman,* 687 So. 2d 1351 (Fla. 3d DCA 1997) (personal income tax returns and financial statements submitted by public officials as part of an application to organize a bank are subject to disclosure).

However, the Legislature has exempted some financial information from disclosure. For example, bank account numbers and debit, charge, and credit card numbers held by an agency are exempt from public disclosure. Section 119.071(5)(b), Florida Statutes.

d. **Trade secrets**

The Legislature has created a number of specific exemptions from Ch. 119, Florida Statutes, for trade secrets. *See, e.g.,* section 1004.22(2), Florida Statutes (trade secrets produced in research conducted within state universities); and section 570.544(8), Florida Statutes (trade secrets contained in records of the Division of Consumer Services of the Department of Agriculture and Consumer Services).

However, even in the absence of a specific statutory exemption for particular trade secrets, section 815.045, Florida Statutes, "should be read to exempt from disclosure as public records all trade secrets as defined in [section 812.081(1)c), Florida Statutes]. . . ." *Sepro Corporation v. Florida Department of Environmental Protection,* 839 So. 2d 781, 785 (Fla. 1st DCA 2003), *review denied sub nom., Crist v. Florida Department of Environmental Protection,* 911 So. 2d 792 (Fla. 2005). (e.s.)

In *Sepro,* the court ruled that while "a conversation with a state employee is not enough to prevent the information from being made available to anyone who makes a public records request," documents submitted by a private party which constituted trade secrets as defined in s. 812.081, and which were stamped as confidential at the time of submission to a state agency, were not subject to public access. *Sepro,* at 784. *Compare, James, Hoyer, Newcomer, Smiljanich & Yanchunis, P.A. v. Rodale, Inc.,* 41 So. 3d 386 (Fla. 1st DCA 2010) (customer complaints and company responses are not protected trade secrets); *Cubic Transportation Systems, Inc. v. Miami-Dade County,* 899 So. 2d 453, 454 (Fla. 3d DCA 2005) (company, which supplied documents to an agency and failed to mark them as "confidential" and which continued to supply them without asserting even a legally ineffectual post-delivery claim to confidentiality for some thirty days failed adequately to protect an alleged trade secret claim). *Cf., Allstate Floridian Ins. Co. v. Office of Ins. Regulation,* 981 So. 2d 617 (Fla. 1st DCA 2008), *review denied,* 987 So. 2d 79 (Fla. 2008) (to the extent Allstate believed any documents sought by the Office of Insurance Regulation were privileged as trade secrets, Allstate was required to timely seek a protective order in circuit court). *And see Office of Insurance Regulation v. State Farm Florida Insurance Company,* 213 So. 3d 1104 (Fla. 1st DCA 2017) and *Surterra Florida, LLC v. Florida Department of Health,* 223 So. 3d 376 (Fla. 1st DCA 2017).

3. **Litigation records**
a. **Attorney-client communications subject to Chapter 119, Florida Statutes**

The Public Records Act applies to communications between attorneys and governmental agencies; there is no judicially created privilege which exempts these documents from disclosure. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979) (only the Legislature and not the judiciary can exempt attorney-client communications from Chapter 119, Florida Statutes). See also, *City of North Miami v. Miami Herald Publishing Company*, 468 So. 2d 218 (Fla. 1985) (although section 90.502, Florida Statutes, of the Evidence Code establishes an attorney-client privilege for public and private entities, this evidentiary statute does not remove communications between an agency and its attorney from the open inspection requirements of Chapter 119, Florida Statutes).

Moreover, public disclosure of these documents does not violate the public agency's constitutional rights of due process, effective assistance of counsel, freedom of speech, or the Supreme Court's exclusive jurisdiction over The Florida Bar. *City of North Miami v. Miami Herald Publishing Company*, supra. Accord, *Brevard County v. Nash*, 468 So. 2d 240 (Fla. 5th DCA 1984); *Edelstein v. Donner*, 450 So. 2d 562 (Fla. 3d DCA 1984), approved, 471 So. 2d 26 (Fla. 1985).

b. **Limited statutory work product exemption**

(1) **Application of the exemption**

The Supreme Court has ruled that the Legislature and not the judiciary has exclusive authority to exempt litigation records from the scope of Chapter 119, Florida Statutes. *Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979). With the enactment of section 119.071(1)(d), Florida Statutes, the Legislature has created a narrow exemption for certain litigation work product of agency attorneys. However, this exemption applies to attorney work product that has reached the status of becoming a public record; as discussed more extensively in the section relating to "attorney notes," certain preliminary trial preparation materials, such as handwritten notes for the personal use of the attorney, are not considered to be within the definitional scope of the term "public records" and, therefore, are outside the scope of Chapter 119, Florida Statutes. See, *Johnson v. Butterworth*, 713 So. 2d 985 (Fla. 1998).

a. **Attorney bills and payments**

Only those records which reflect a "mental impression, conclusion, litigation strategy, or legal theory" are included within the parameters of the work product exemption. Accordingly, a contract between a county and a private law firm for legal counsel and documentation for invoices submitted by such firm to the county do not fall within the work product exemption. Op. Att'y Gen. Fla. 85-89 (1985). If the bills and invoices contain exempt work product under section 119.071(1)(d) -- i.e., "mental impression[s], conclusion[s], litigation strateg[ies], or legal theor[ies]," -- the exempt material may be deleted and the remainder disclosed. Id. However, information such as the hours worked or the hourly wage clearly would not fall within the scope of the
exemption. _Id._

Thus, an agency which improperly "blocked out" most notations on invoices prepared in connection with services rendered by and fees paid to attorneys representing the agency, "improperly withheld" nonexempt material when it failed to limit its redactions to those items "genuinely reflecting its 'mental impression, conclusion, litigation strategy, or legal theory.'” _Smith & Williams, P.A. v. West Coast Regional Water Supply Authority_, 640 So. 2d 216 (Fla. 2d DCA 1994). _And see_, Op. Att'y Gen. Fla. 00-07 (2000) (records of outside attorney fee bills received by the county's risk management office for the defense of the county, as well as its employees who are sued individually, for alleged civil rights violations are public records subject to disclosure).

**b. Scope of the exemption**

Section 119.071(1)(d), Florida Statutes, does not create a blanket exception to the Public Records Act for all attorney work product. _Op. Att'y Gen. Fla. 91-75_ (1991). The exemption is narrower than the work product privilege recognized by the courts for private litigants. _Op. Att'y Gen. Fla. 85-89_ (1985). The records must have been prepared “exclusively” for litigation or adversarial administrative proceedings, or prepared in anticipation of imminent litigation or adversarial administrative proceedings; records prepared for other purposes may not be converted into exempt material simply because they are also used in or related to the litigation. For example, memoranda prepared by a state corrections department attorney regarding lethal injection procedures do not constitute exempt attorney work product because neither memorandum “relates to any pending litigation or appears to have been prepared ‘exclusively for litigation.’” _Lightbourne v. McCollum_, 969 So. 2d 326, 333 (Fla. 2007).

Moreover, only those records which are prepared by or at the express direction of the agency attorney and reflect "a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency" are exempt from disclosure until the conclusion of the proceedings. _See_, _City of North Miami v. Miami Herald Publishing Company_, 468 So. 2d 218, 219 (Fla. 1985) (noting application of exemption to "government agency, attorney-prepared litigation files during the pendency of litigation"); and _City of Miami Beach v. DeLapp_, 472 So. 2d 543 (Fla. 3d DCA 1985) (opposing counsel not entitled to city's legal memoranda as such material is exempt work product). _Compare_, _City of Orlando v. Desjardins_, 493 So. 2d 1027, 1028 (Fla. 1986) (trial court must examine city's litigation file in accident case and prohibit disclosure only of those records reflecting mental impression, conclusion, litigation strategy or legal theory of attorney or city) and _Lightbourne v. McCollum_, _supra_ (memoranda do not constitute exempt work product because they appear to be “final in form” and convey "specific factual information" rather than mental impressions or litigation strategies). _See also_, _Op. Att'y Gen. Fla. 91-75_ (1991) (work product exemption not applicable to documents generated or received by school district investigators, acting at the direction of the school board to conduct an investigation of certain school district departments).

(2) **Commencement and termination of exemption**
Unlike the open meetings exemption in section 286.011(8), Florida Statutes, for certain attorney-client discussions between a governmental agency and its attorney, section 119.071(1)(d), Florida Statutes, is not limited to records created for pending litigation or proceedings, but applies also to records prepared "in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings." See, Op. Att'y Gen. Fla. 98-21 (1998), discussing the differences between the public records work product exemption in section 119.071(1)(d), and the Sunshine Law exemption in section 286.011.

But, the exemption from disclosure provided by section 119.071(1)(d), Florida Statutes, is temporary and limited in duration. City of North Miami v. Miami Herald Publishing Co., supra. The exemption exists only until the "conclusion of the litigation or adversarial administrative proceedings" even if other issues remain. Seminole County v. Wood, 512 So. 2d 1000 (Fla. 5th DCA 1987), review denied, 520 So. 2d 586 (Fla. 1988). Cf., Lightbourne v. McCollum, supra (even if memoranda might have been exempt work product at one time, the state waived the exemption by producing them as part of a public records response and filing copies in the court file).

For example, if the state settles a claim against one company accused of conspiracy to fix prices, the state has concluded the litigation against that company. Thus, the records prepared in anticipation of litigation against that company are no longer exempt from disclosure even though the state has commenced litigation against the alleged co-conspirator. State v. Coca-Cola Bottling Company of Miami, Inc., 582 So. 2d 1 (Fla. 4th DCA 1990). And see, Tribune Company v. Hardee Memorial Hospital, No. CA-91-370 (Fla. 10th Cir. Ct. Aug. 19, 1991) (settlement agreement not exempt as attorney work product even though another related case was pending, and agency attorneys feared disclosure of their assessment of the merits of the case and their litigation strategy). Thus, a school board failed to meet its burden to show that items contained in a school board litigation report were exempt from disclosure where there was no evidence that the cases in question were pending and open when the board received the public records request. Barfield v. School Board of Manatee County, 135 So. 3d 560 (Fla. 2d DCA 2014).

The Legislature has, however, established specific exemptions which address disclosure of some risk management files when other related claims remain. For example, section 768.28(16), Florida Statutes, provides an exemption for claim files maintained by agencies pursuant to a risk management program for tort liability until the termination of the litigation and settlement of all claims arising out of the same incident. See, Wagner v. Orange County, 960 So. 2d 785 (Fla. 5th DCA 2007) (section 768.28, Florida Statutes, exemption continues to apply to county’s litigation file when plaintiff pursues a portion of judgment entered against the county through the state legislative claims bill process). Cf. City of Homestead v. McDonough, 42 F.L.W. D2351 (Fla. 3d DCA November 1, 2017) (court cannot order disclosure of exempt risk management file records on the basis that no prejudice would result to the city if the records were disclosed).

The exemption afforded by section 768.28(16)(d), Florida Statutes, however, is
limited to tort claims for which the agency may be liable under section 768.28, Florida Statutes, and does not apply to federal civil rights actions under 42 U.S.C. section 1983. Ops. Att'y Gen. Fla. 00-20 (2000) and 00-07 (2000). And see, Op. Att'y Gen. Fla. 92-82 (1992) (open meetings exemption provided by section 768.28, Florida Statutes, applies only to meetings held after a tort claim is filed with the risk management program). Cf., Op. Att'y Gen. Fla. 07-47 (2007) (nothing in section 768.28 expressly includes or excludes the “notice of claim” from the exemption and the Attorney General's Office may not conclude that all such notices are per se exempt from disclosure; it is the public agency “which must make the determination in good faith whether the notice of claim falls within the public records exemption for claims files”).

Regarding draft settlements received by an agency in litigation, a circuit court has held that draft settlement agreements furnished to a state agency by a federal agency were public records despite the department's agreement with the federal agency to keep such documents confidential. Florida Sugar Cane League, Inc. v. Department of Environmental Regulation, No. 91-2108 (Fla. 2d Cir. Ct. Sept. 20, 1991), affirmed, 606 So. 2d 1267 (Fla. 1st DCA 1992). See also Informal Opinion to Gastesi, August 27, 2015 (settlement demand furnished by plaintiff to agency).

c. Attorney notes

Relying on its conclusion in Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So. 2d 633 (Fla. 1980), the Florida Supreme Court has recognized that "not all trial preparation materials are public records." State v. Kokal, 562 So. 2d 324, 327 (Fla. 1990). In Kokal, the Court approved the decision of the Fifth District in Orange County v. Florida Land Co., 450 So. 2d 341, 344 (Fla. 5th DCA 1984), review denied, 458 So. 2d 273 (Fla. 1984), which described certain documents as not within the term 'public records.'

Similarly, in Johnson v. Butterworth, 713 So. 2d 985 (Fla. 1998), the Court ruled that "outlines, time lines, page notations regarding information in the record, and other similar items" in the case file, did not fall within the definition of public record, and thus were not subject to disclosure. See also, Lopez v. State, 696 So. 2d 725 (Fla. 1997) (handwritten notes dealing with trial strategy and cross examination of witnesses, not public records); and Atkins v. State, 663 So. 2d 624 (Fla. 1995) (notes of state attorney's investigations and annotated photocopies of decisional case law, not public records).

By contrast, documents prepared to communicate, perpetuate, or formalize knowledge constitute public records and are, therefore, subject to disclosure in the absence of statutory exemption. See, Shevin v. Byron, Harless, Schaffer, Reid & Associates, Inc., 379 So. 2d 633, 640 (Fla. 1980), in which the Court noted that "[i]nter-office 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."
Thus, in *Orange County v. Florida Land Company, supra*, the court concluded that trial preparation materials consisting of interoffice and intraoffice memoranda communicating information from one public employee to another or merely prepared for filing, even though not part of the agency's formal work product, were public records. As public records, such circulated trial preparation materials might be exempt from disclosure pursuant to section 119.071(1)(d), Florida Statutes, while the litigation is ongoing; however, once the case is over the materials would be open to inspection. And see, Op. Att'y Gen. Fla. 05-23 (2005).

4. **Personnel records**

The general rule with regard to personnel records is the same as for other public records; unless the Legislature has expressly exempted an agency's personnel records from disclosure or authorized the agency to adopt rules limiting access to such records, personnel records are subject to public inspection and copying under section 119.07(1), Florida Statutes. *Michel v. Douglas*, 464 So. 2d 545 (Fla. 1985). For more information on the statutory exemptions for information contained in personnel records, please refer to the Government in the Sunshine Manual, available online at myfloridalegal.com.

a. **Privacy concerns**

The courts have rejected claims that constitutional privacy interests operate to shield agency personnel records from disclosure. See, *Michel v. Douglas*, 464 So. 2d 545, 546 (Fla. 1985), holding that the state constitution "does not provide a right of privacy in public records" and that a state or federal right of disclosural privacy does not exist. "Absent an applicable statutory exception, pursuant to Florida's Public Records Act . . . public employees (as a general rule) do not have privacy rights in such records." *Alterra Healthcare Corporation v. Estate of Shelley*, 827 So. 2d 936, 940n.4 (Fla. 2002).

Additionally, the judiciary has refused to deny access to personnel records based on claims that the release of such information could prove embarrassing or unpleasant for the employee. See, *News-Press Publishing Company, Inc. v. Gadd*, 388 So. 2d 276 (Fla. 2d DCA 1980), stating that a court is not free to consider public policy questions regarding the relative significance of the public's interest in disclosure and damage to an individual or institution resulting from such disclosure.

b. **Conditions for inspection of personnel records**


Thus, an agency is not authorized to "seal" disciplinary notices and thereby remove such notices from disclosure under the Public Records Act. Op. Att'y Gen. Fla. 94-75 (1994). Nor may an agency agree to remove disciplinary records from an employee’s personnel file and maintain them in separate disciplinary file for the purpose
of removing such records from public access. Op. Att'y Gen. Fla. 94-54 (1994). Accord Op. Att'y Gen. Fla. 11-19 (2011) (superintendent’s failure to comply with a statutory requirement to discuss a performance evaluation with the employee before filing it in the employee’s personnel file does not change the public records status of the evaluation; the evaluation is a public record and may not be removed from public view or destroyed). Cf., section 69.081(8)(a), Florida Statutes, providing, subject to limited exceptions, that any portion of an agreement or contract which has the purpose or effect of concealing information relating to the settlement or resolution of a claim against the state or its subdivisions is "void, contrary to public policy, and may not be enforced." See also section 215.425(4)(b), Florida Statutes (on or after July 1, 2011, settlements to resolve employment disputes which result in the payment of severance pay authorized by that statute "may not include provisions that limit the ability of any party to the settlement to discuss the dispute or settlement").

5. **Social security numbers**

Section 119.071(5)(a)5., Florida Statutes, states that social security numbers held by an agency are confidential and exempt from disclosure requirements. Disclosure to another governmental agency is authorized if disclosure is necessary to the performance of the receiving agency's duties and responsibilities. Section 119.071(5)(a)6., Florida Statutes.

Upon verified written request which contains the information specified in the statute, a commercial entity engaged in a commercial activity as defined in the exemption may be allowed access to social security numbers, provided that the numbers will be used only in the performance of a commercial activity. Section 119.071(5)(a)7., Florida Statutes. The question of whether a particular type of activity constitutes “commercial activity” for purposes of this provision cannot be resolved by the Attorney General’s Office. Op. Att’y Gen. Fla. 10-06 (2010).

D. **TO WHAT EXTENT MAY AN AGENCY REGULATE OR LIMIT INSPECTION AND COPYING OF PUBLIC RECORDS?**

1. *May an agency impose its own restrictions on access to or copying of public records?*

Any local enactment or policy which purports to dictate additional conditions or restrictions on access to public records is of dubious validity since the legislative scheme of the Public Records Act has preempted any local regulation of this subject. See, Tribune Company v. Cannella, 458 So. 2d 1075 (Fla. 1984), appeal dismissed sub nom., DePerte v. Tribune Company, 105 S.Ct. 2315, (1985). Accord, Herbits v. City of Miami, 207 So. 3d 274 (Fla. 3rd DCA 2016) (“The Florida Legislature has so pervasively legislated regarding [public records] that a local government is precluded from legislating in the same area”).

2. *What agency employees are responsible for responding to
public records requests?

Section 119.011(5), Florida Statutes, defines the term "custodian of public records" to mean "the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee." A custodian of public records or a person having custody of public records may designate another officer or employee of the agency to permit the inspection and copying of public records, but must disclose the identity of the designee to the person requesting to inspect or copy public records. Section 119.07(1)(b), Florida Statutes.

However, the statutory reference to the records custodian does not alter the "duty of disclosure" imposed by section 119.07(1), Florida Statutes, upon "[e]very person who has custody of a public record." Puls v. City of Port St. Lucie, 678 So. 2d 514 (Fla. 4th DCA 1996). [emphasis supplied by the court].

Thus, the term "custodian" for purposes of the Public Records Act refers to all agency personnel who have it within their power to release or communicate public records. Mintus v. City of West Palm Beach, 711 So. 2d 1359 (Fla. 4th DCA 1998), citing to, Williams v. City of Minneola, 575 So. 2d 683, 687 (Fla. 5th DCA 1991). But, "the mere fact that an employee of a public agency temporarily possesses a document does not necessarily mean that the person has custody as defined by section 119.07." Mintus, supra, at 1361.

3. What individuals are authorized to inspect and receive copies of public records?

Section 119.01, Florida Statutes, provides that "[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person." (e.s.) See, Curry v. State, 811 So. 2d 736 (Fla. 4th DCA 2002) (defendant’s conduct in making over 40 public records requests concerning victim constituted a "legitimate purpose" within the meaning of the aggravated stalking law "because the right to obtain the records is established by statute and acknowledged in the state constitution").

4. Must an individual show a "special interest" or "legitimate interest" in public records before being allowed to inspect or copy same?

No. The requestor is not required to explain the purpose or reason for a public records request. “The motivation of the person seeking the records does not impact the person’s right to see them under the Public Records Act.” Curry v. State, 811 So. 2d 736, 742 (Fla. 4th DCA 2002). Similarly, "the fact that a person seeking access to public records wishes to use them in a commercial enterprise does not alter his or her rights under Florida’s public records law." Microdecisions, Inc. v. Skinner, 889 So. 2d 871,875 (Fla. 2d DCA 2004), review denied, 902 So. 2d 791 (Fla. 2005).

Note, however, that section 817.568, Florida Statutes, provides criminal penalties for unauthorized use of personal identification information for fraudulent or harassment
purposes. And see, section 817.569, Florida Statutes, providing penalties for criminal use of a public record or public records information.

5. **May an agency refuse to allow inspection or copying of public records on the grounds that the request for such records is "overbroad" or lacks particularity?**

No. The custodian is not authorized to deny a request to inspect and/or copy public records because of a lack of specifics in the request. See, Lorei v. Smith, 464 So. 2d 1330, 1332 (Fla. 2d DCA 1985), review denied, 475 So. 2d 695 (Fla. 1985), recognizing that the "breadth of such right [to inspect] is virtually unfettered, save for the statutory exemptions . . . ." Cf., Woodard v. State, 885 So. 2d 444 (Fla. 4th DCA 2004) (records custodian must furnish copies of records when the person requesting them identifies the portions of the record with sufficient specificity to permit the custodian to identify the record and forwards the statutory fee).

6. **When must an agency respond to a public records request?**

A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith. Section 119.07(1)(c), Florida Statutes. A good faith response includes making reasonable efforts to determine from other officers or employees within the agency whether such a record exists and, if so, the location at which the record can be accessed. Id.

The Public Records Act does not contain a specific time limit (such as 24 hours or 10 days) for compliance with public records requests. The Florida Supreme Court has stated that the only delay in producing records permitted under Chapter 119, Florida Statutes, is the reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt. Tribune Company v. Cannella, 458 So. 2d 1075 (Fla. 1984), appeal dismissed sub nom., Deperte v. Tribune Company, 105 S.Ct. 2315 (1985).

A municipal policy which provides for an automatic delay in the production of public records is impermissible. Tribune Company v. Cannella, supra. Thus, an agency is not authorized to delay inspection of personnel records in order to allow the employee to be present during the inspection of his records. Tribune Company v. Cannella, supra. Nor may a city delay public access to board meeting minutes until after the city commission has approved them. Grapski v. City of Alachua, 31 So. 3d 193 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1288 (Fla. 2010). And see 96-55 (1996) (board of trustees of a police pension fund may not delay release of its records until such time as the request is submitted to the board for a vote).

An agency's unjustified delay in producing public records has been determined to constitute an unlawful refusal to provide access to public records. See Lilker v. Suwannee Valley Transit Authority, 133 So. 3d 654, 655 (Fla. 1st DCA 2014) (“Unlawful refusal . . . includes not only affirmative refusal to produce records, but also
unjustified delay in producing them”). See also, Hewlings v. Orange County, Florida, 87 So. 3d 839 (Fla. 5th DCA 2012) (mere fact that county quickly responded to public records request by voicemail and fax is not dispositive of whether county unjustifiably delayed in complying with the request); and Promenade D’Iberville, LLC v. Sundy, 145 So. 3d 980, 983 (Fla. 1st DCA 2014) (agency violated the Public Records Act by “delaying access to non-exempt public records for legally insufficient reasons”). Compare Consumer Rights, LLC v. Union County, 159 So. 3d 882 (Fla. 1st DCA 2015), review denied, 177 So. 3d 1264 (Fla. 2015) (agency’s delay was not “unjustifiable” where petitioner made the public records request “in a suspicious email that could not be easily verified, directed it to a general email account that might not be checked by the person having anything to do with the records at issue, waited four months without saying anything and then sued . . . .”). Accord, Citizens Awareness Foundation, Inc. v. Wantman Group, Inc., 195 So. 3d 396, 400, 401 (Fla. 4th DCA 2016) (contractor’s delay in responding to a “curious e-mail request for records” was not unjustified; “public records law should not be applied in a way that encourages the manufacture of public records requests designed to obtain no response, for the purpose of generating attorney’s fees”).

While the custodian may reasonably restrict inspection to those hours during which his or her office is open to the public, an agency policy that restricts inspection of public records to the hours of 8:30 a.m. to 9:30 a.m., Monday through Friday with 24-hour advance notice violates the Public Records Act. Lake Shore Hospital Authority v. Lilker, 168 So. 3d 332 (Fla. 1st DCA 2015). And see AGO 81-12.

7. May an agency require that a request to examine or copy public records be made in writing or require that the requestor furnish background information to the custodian?

No. Nothing in Chapter 119, Florida Statutes, requires that a requesting party make a demand for public records in person or in writing. See, Dade Aviation Consultants v. Knight Ridder, Inc., 800 So. 2d 302, 305n. 1 (Fla. 3d DCA 2001) (“There is no requirement in the Public Records Act that requests for records must be in writing”); and Chandler v. City of Greenacres, 140 So. 3d 1080 (Fla. 4th DCA 2014) (city not authorized to require form as a condition for production of public records). And see Inf. Op. to Cook, May 27, 2011 (agency may not require public records requestor to provide physical address for mailing copies or to be physically present in order to inspect records).

If a public agency believes that it is necessary to provide written documentation of a request for public records, the agency may require that the custodian complete an appropriate form or document; however, the person requesting the records cannot be required to provide such documentation as a precondition to the granting of the request to inspect or copy public records. See, Sullivan v. City of New Port Richey, No. 86-1129CA (Fla. 6th Cir. Ct. May 22, 1987), affirmed, 529 So. 2d 1124 (Fla. 2d DCA 1988), noting that a public records requestor’s failure to complete a city form required for access to documents did not authorize the custodian to refuse to honor the request to inspect or copy public records.
8. **Is an agency required to give out information from public records or to otherwise reformat records in a particular form as demanded by the requestor?**

A custodian is not required to give out *information* from the records of his or her office. Op. Att'y Gen. Fla. 80-57 (1980). The Public Records Act does not require a town to produce an employee, such as the financial officer, to answer questions regarding the financial records of the town. Op. Att'y Gen. Fla. 92-38 (1992).

Similarly, if an agency maintains a list of the names of officers and employees who have requested the exemption of their home addresses and telephone numbers under section 119.071(4)(d), Florida Statutes, the agency must provide the list. Op. Att'y Gen. Fla. 08-29 (2008). However, the agency is not required to reformat its records to make such a list in order to comply with a request under Chapter 119. *Id.* Nor is the clerk of court required to provide an inmate with a list of documents from a case file which may be responsive to some forthcoming request. *Wootton v. Cook*, 590 So. 2d 1039 (Fla. 1st DCA 1991). However, in order to comply with the statutory directive that an agency provide copies of public records upon payment of the statutory fee, an agency must respond to requests by mail for information as to copying costs. *Id.* And see, *Woodard v. State*, 885 So. 2d 444, 445n.1 (Fla. 4th DCA 2004) (case remanded where agency provided only information relating to statutory fee schedule rather than total copying cost of requested records).

An agency is not ordinarily required to reformat its records and provide them in a particular form as demanded by the requestor. *Seigle v. Barry*, 422 So. 2d 63 (Fla. 2d DCA 1982). However, an agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium. Section 119.01(2)(f), Florida Statutes. See Op. Att'y Gen. Fla. 91-61 (1991) (if asked, custodian must provide copy of computer disk; a typed transcript would not satisfy the requirements of section 119.07[1], Florida Statutes). Cf., *Miami-Dade County v. Professional Law Enforcement Association*, 997 So. 2d 1289 (Fla. 3d DCA 2009) (the fact that pertinent information may exist in more than one format is not a basis for exemption or denial of a public records request).

Thus, upon receipt of a public records request, the agency must comply by producing all non-exempt records in the custody of the agency that are responsive to the request, upon payment of the charges authorized in Chapter 119, Florida Statutes. However, this mandate applies only to those records in the custody of the agency at the time for request; nothing in the Public Records Act appears to require that an agency respond to a so-called “standing” request for production of public records that it may receive in the future. See, Inf. Op. to Worch, June 15, 1995.

9. **May an agency refuse to comply with a request to inspect or copy the agency’s public records on the grounds that the records are not in the physical possession of the custodian?**

No. An agency is not authorized to refuse to allow inspection of public records on the grounds that the documents have been placed in the actual possession of an
agency or official other than the records custodian. See, Tober v. Sanchez, 417 So. 2d 1053 (Fla. 3d DCA 1982), review denied sub nom., Metropolitan Dade County Transit Agency v. Sanchez, 426 So. 2d 27 (Fla. 1983) (official charged with maintenance of records may not transfer actual physical custody of records to county attorney and thereby avoid compliance with request for inspection under Chapter 119, Florida Statutes); and Chandler v. City of Sanford, 121 So. 3d 657, 660 (Fla. 5th DCA 2013) (City “cannot be relieved of its legal responsibility for the public records by transferring the records to another agency”).

10. May an agency refuse to allow access to public records on the grounds that the records are also maintained by another agency?

No. The fact that a particular record is also maintained by another agency does not relieve the custodian of the obligation to permit inspection and copying in the absence of an applicable statutory exemption. Op. Att'y Gen. Fla. 86-69 (1986).

11. In the absence of express legislative authorization, may an agency refuse to allow public records made or received in the normal course of business to be inspected or copied if requested to do so by the maker or sender of the document?

No. To allow the maker or sender of documents to dictate the circumstances under which the documents are to be deemed confidential would permit private parties as opposed to the Legislature to determine which public records are subject to disclosure and which are not. Such a result would contravene the purpose and terms of Chapter 119, Florida Statutes. See, Browning v. Walton, 351 So. 2d 380 (Fla. 4th DCA 1977) (a city cannot refuse to allow inspection of records containing the names and addresses of city employees who have filled out forms requesting that the city maintain the confidentiality of all material in their personnel files). Accord, Sepro Corporation v. Florida Department of Environmental Protection, 839 So. 2d 781 (Fla. 1st DCA 2003), review denied sub nom, Crist v. Department of Environmental Protection, 911 So. 2d 792 (Fla. 2005), (private party cannot render public records exempt from disclosure merely by designating information it furnishes a governmental agency confidential). Cf., Hill v. Prudential Ins. Co. of America, 701 So. 2d 1218 (Fla. 1st DCA 1997), review denied, 717 So. 2d 536 (Fla. 1998) (materials obtained by state agency from anonymous sources during the course of its investigation of an insurance company were public records and subject to disclosure in the absence of statutory exemption, notwithstanding the company's contention that the records were "stolen" or "misappropriated" privileged documents that were delivered to the state without the company's permission).

Similarly, it has been held that an agency "cannot bargain away its Public Records Act duties with promises of confidentiality in settlement agreements." Tribune Company v. Hardee Memorial Hospital, No. CA-91-370 (Fla. 10th Cir. Ct. Aug. 19, 1991), stating that a confidentiality provision in a settlement agreement which resolved litigation against a public hospital did not remove the document from the Public Records Act. Cf., section 69.081(8), Florida Statutes, part of the "Sunshine in Litigation Act,"
providing, subject to certain exceptions, that any portion of an agreement which conceals information relating to the settlement or resolution of any claim or action against an agency is void, contrary to public policy, and may not be enforced, and requiring that settlement records be maintained in compliance with Chapter 119, Florida Statutes. And see, National Collegiate Athletic Association v. The Associated Press, 18 So. 3d 1201 (Fla. 1st DCA 2009), review denied, 37 So. 3d 848 (Fla. 2010), holding that a confidentiality agreement entered into by a private law firm on behalf of a state university with the NCAA that allowed access to records contained on the NCAA’s secure custodial website that were used by the university in preparing a response to possible NCAA sanctions, had no impact on whether such records were public records stating that “[a] public record cannot be transformed into a private record merely because an agent of the government has promised that it will be kept private”; and Inf. Op. to Barry, June 24, 1998, stating that “a state agency may not enter into a settlement agreement or other contract which contains a provision authoring the concealment of information relating to a disciplinary proceeding or other adverse employment decision from the remainder of a personnel file.”

12. Must an agency state the basis for its refusal to release an exempt record?

Yes. Section 119.07(1)(e), Florida Statutes, states that a custodian of a public record who contends that a record or part of a record is exempt from inspection must state the basis for the exemption, including the statutory citation to the exemption. Additionally, upon request, the custodian must state in writing and with particularity the reasons for the conclusion that the record is exempt from inspection. Section 119.07(1)(f), Florida Statutes. See, Weeks v. Golden, 764 So. 2d 633 (Fla. 1st DCA 2000)(agency's response that it had provided all records "with the exception of certain information relating to the victim" deemed inadequate because the response "failed to identify with specificity either the reasons why the records were believed to be exempt, or the statutory basis for any exemption. Cf., City of St. Petersburg v. Romine, 719 So. 2d 19, 21 (Fla. 2d DCA 1998), noting that the Public Records Act "may not be used in such a way as to obtain information that the Legislature has declared must be exempt from disclosure."

However, section 119.07(1)(e) “requires only record-by-record—not redaction-by-redaction—identification of the exemptions authorizing the redactions in each record.” Jones v. Miami Herald Media Company, 198 So. 3d 1143 (Fla. 1st DCA 2016). The court upheld the agency’s use of a form with checkboxes identifying the various statutory exemptions relied upon for the redactions in the records and rejected the petitioner’s contention that the agency should have specified which exemption applied to which redaction.

13. May an agency refuse to allow inspection and copying of an entire public record on the grounds that a portion of the record contains information which is exempt from disclosure?

No. Where a public record contains some information which is exempt from
disclosure, section 119.07(1)(d), Florida Statutes, requires the custodian of that
document to redact only that portion of the record for which a valid exemption is
asserted and to provide the remainder of the record for inspection and copying. See,
Ocala Star Banner Corp. v. McGhee, 643 So. 2d 1196 (Fla. 5th DCA 1994) (city may
redact confidential identifying information from police report but must produce the rest
for inspection). The fact that an agency believes that it would be impractical or
burdensome to redact confidential information from its records does not excuse
exempt information and release the remainder of the record; agency is not authorized to
release records containing confidential information, albeit anonymously.)

14. May an agency refuse to allow inspection of public records
because the agency believes disclosure could violate privacy
rights?

It is well established in Florida that "neither a custodian of records nor a person
who is the subject of a record can claim a constitutional right of privacy as a bar to
requested inspection of a public record which is in the hands of a government agency." 
Williams v. City of Minneola, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), review denied,
589 So. 2d 289 (Fla. 1991). Thus, to the extent that information on a city’s Facebook
page constitutes a public record within the meaning of the Public Records Act, the state
constitutional privacy provision in Article I, section 23, Florida Constitution, “is not

15. What is the liability of a custodian for release of public
records?

It has been held that there is nothing in Chapter 119, Florida Statutes, indicating
an intent to give private citizens a right to recovery for negligently maintaining and
providing information from public records. Friedberg v. Town of Longboat Key, 504 So.
2d 52 (Fla. 2d DCA 1987).

However, a custodian is not protected against tort liability resulting from that
person intentionally communicating public records or their contents to someone outside
the agency which is responsible for the records unless the person inspecting the
records has made a bona fide request to inspect the records or the communication is
necessary to the agency’s transaction of its official business. Williams v. City of
Minneola, 575 So. 2d 683 (Fla. 5th DCA 1991), review denied, 589 So. 2d 289 (Fla.

E. WHAT IS THE LEGAL EFFECT OF STATUTORY EXEMPTIONS FROM
DISCLOSURE?

1. Creation of exemptions

"Courts cannot judicially create any exceptions, or exclusions to Florida’s Public
Records Act." Board of County Commissioners of Palm Beach County v. D.B., 784 So.
Article I, section 24(c), Florida Constitution, authorizes the Legislature to enact general laws creating exemptions provided that such laws "shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law." See, Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation, 729 So. 2d 373, 380 (Fla. 1999), in which the Court refused to "imply" an exemption from open records requirements, stating "we believe that an exemption from public records access is available only after the legislature has followed the express procedure provided in Article I, section 24(c) of the Florida Constitution."

2. **Exemptions are strictly construed**

The Public Records Act is to be liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. See National Collegiate Athletic Association v. Associated Press, 18 So. 3d 1201, 1206 (Fla. 1st DCA 2009), review denied, 37 So. 3d 848 (Fla. 2010); Krischer v. D'Amato, 674 So. 2d 1000 (Fla. 5th DCA 1997), review denied, 520 So. 2d 586 (Fla. 1988). And see, Halifax Hospital Medical Center v. News-Journal Corporation, 724 So. 2d 567 (Fla. 1999) (1995 exemption to the Sunshine Law for certain hospital board meetings ruled unconstitutional because it did not meet the constitutional standard for exemptions set forth in article I, section 24[b] and [c], Florida Constitution).

An agency claiming an exemption from disclosure bears the burden of proving the right to an exemption. See, Barfield v. School Board of Manatee County, 135 So. 3d 560, 562 (Fla. 2d DCA 2014); Woolling v. Lamar, 764 So. 2d 765, 768 (Fla. 5th DCA 2000), review denied, 786 So. 2d 1186 (Fla. 2001); Florida Freedom Newspapers, Inc. v. Dempsey, 478 So. 2d 1128 (Fla. 1st DCA 1985).

Access to public records is a substantive right. Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation, 784 So. 2d 438 (Fla. 2001). Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. Id. See also, Baker County Press, Inc. v. Baker County Medical Services, Inc., 870 So. 2d 189, 192-193 (Fla. 1st DCA 2004) (generally, the critical date in determining whether a document is subject to disclosure is the date the public records request is made; the law in effect on that date applies).

However, if the Legislature is "clear in its intent," an exemption may be applied retroactively. Campus Communications, Inc. v. Earnhardt, 821 So. 2d 388, 396 (Fla. 5th DCA 2002), review denied, 848 So. 2d 1153 (Fla. 2003) (statute exempting autopsy photographs from disclosure is remedial and may be retroactively applied). Accord Op. Att'y Gen. Fla. 11-16 (2011) (applying exemption to a public records request received before the statute's effective date because the legislation creating the exemption states
that it “applies to information held by an agency, before, on or after the effective date of this exemption”). And see Palm Beach County Sheriff’s Office v. Sun-Sentinel Company, 42 F.L.W. D1954 (Fla. 4th DCA September 6, 2017).

3. Release or transfer of confidential or exempt records

There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Act and confidential. WFTV, Inc. v. School Board of Seminole, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied, 892 So. 2d 1015 (Fla. 2004). If information is made confidential in the statutes, the information is not subject to inspection by the public and may be released only to those persons and entities designated in the statute. Id. And see, Ops. Att'y Gen. Fla. 04-09 (2004) and 86-97 (1986).

On the other hand, if the records are not made confidential but are simply exempt from the mandatory disclosure requirements in section 119.07(1)(a), Florida Statutes, the agency is not prohibited from disclosing the documents in all circumstances. See, Williams v. City of Minneola, 575 So. 2d 683 (Fla. 5th DCA 1991), review denied, 589 So. 2d 289 (Fla. 1991), in which the court observed that pursuant to section 119.07(3)(d), Florida Statutes, [now section 119.071(2)(c), Florida Statutes] "active criminal investigative information" was exempt from the requirement that public records be made available for public inspection. However, as stated by the court, "the exemption does not prohibit the showing of such information." 575 So. 2d at 686.

In City of Riviera Beach v. Barfield, 642 So. 2d 1135 (Fla. 4th DCA 1994), review denied, 651 So. 2d 1192 (Fla. 1995), the court stated that when a criminal justice agency transfers exempt information to another criminal justice agency, the information retains its exempt status. And see, Ragsdale v. State, 720 So. 2d 203, 206 (Fla. 1998) ("the focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands").

F. TO WHAT EXTENT DOES FEDERAL LAW PREEMPT STATE LAW REGARDING PUBLIC INSPECTION OF RECORDS?

The general rule is that records which would otherwise be public under state law are unavailable for public inspection only when there is an absolute conflict between federal and state law relating to confidentiality of records. If a federal statute requires particular records to be closed and the state is clearly subject to the provisions of such statute, then pursuant to the Supremacy Clause of the United States Constitution, Article VI, section 2, United States Constitution, the state must keep the records confidential. State ex rel. Cummer v. Pace, 159 So. 679 (Fla. 1935); Ops. Att'y Gen. Fla. 90-102 (1990), 85-3 (1985), 81-101 (1981), 80-31 (1980), 74-372 (1974), and 73-278 (1973). And see, Florida Department of Education v. NYT Management Services, Inc., 895 So. 2d 1151 (Fla. 1st DCA 2005) (federal law prohibits public disclosure of social security numbers in state teacher certification database).
Thus, tenant records of a public housing authority are not exempt, by reason of the Federal Privacy Act, from disclosure otherwise required by the Florida Public Records Act. *Housing Authority of the City of Daytona Beach v. Gomillion*, 639 So. 2d 117 (Fla. 5th DCA 1994). *And see, Wallace v. Guzman*, 687 So. 2d 1351 (Fla. 3d DCA 1997) (exemptions from disclosure in Federal Freedom of Information Act apply to documents in the custody of federal agencies; the Act is not applicable to state agencies).

In the absence of statutory authorization, a public official is not empowered to obtain a copyright for material produced by his or her office in connection with the transaction of official business. Ops. Att'y Gen. Fla. 03-42 (2003) and 88-23 (1988). Thus, a property appraiser is not authorized to assert copyright protection in the Geographic Information Systems maps created by his office. *Microdecisions, Inc. v. Skinner*, 889 So. 2d 871 (Fla. 2d DCA 2004), review denied, 902 So. 2d 791 (Fla. 2005).

The federal copyright law, when read together with Florida's Public Records Act, authorizes and requires the custodian of records of the Department of State to make maintenance manuals supplied to that agency pursuant to law available for examination and inspection purposes. With regard to reproducing, copying, and distributing copies of these maintenance manuals which are protected under the federal copyright law, state law must yield to the federal law on the subject. Op. Att'y Gen. Fla. 03-26 (2003). *Cf., State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy*, 636 So. 2d 1377 (Fla. 1st DCA 1994) (agency copy of administrative hearing transcript is a public record regardless of who ordered the transcription or bore its expense; thus, agency can charge only the fees authorized in Chapter 119, Florida Statutes, regardless of the fact that the court reporter may have copyrighted the transcript).

**G. WHAT FEES MAY LAWFULLY BE IMPOSED FOR INSPECTING AND COPYING PUBLIC RECORDS**

1. **When may an agency charge a fee for the mere inspection of public records?**

As noted in Op. Att'y Gen. Fla. 85-03 (1985), providing access to public records is a statutory duty imposed by the Legislature upon all record custodians and should not be considered a profit-making or revenue-generating operation. Thus, public information must be open for inspection without charge unless otherwise expressly provided by law. *See, State ex rel. Davis v. McMillan*, 38 So. 666 (Fla. 1905).

Section 119.07(4)(d), Florida Statutes, authorizes the imposition of a special service charge when the nature or volume of public records to be inspected is such as to require extensive use of information technology resources, or extensive clerical or supervisory assistance, or both. The charge must be reasonable and based on the labor or computer costs actually incurred by the agency. Thus, an agency may adopt a policy imposing a reasonable special service charge based on the actual labor cost for personnel who are required, due to the nature or volume of a public records request, to
safeguard such records from loss or destruction during their inspection. Op. Att'y Gen. Fla. 00-11 (2000). In doing so, however, the county's policy should reflect no more than the actual cost of the personnel's time and be sensitive to accommodating the request in such a way as to ensure unfettered access while safeguarding the records. Id.

2. **Is an agency required to provide copies of public records if asked, or may the agency allow inspection only?**

Section 119.07(4), Florida Statutes, provides that the custodian shall furnish a copy or a certified copy of a public record upon payment of the fee prescribed by law. See, *Fuller v. State ex rel. O'Donnell*, 17 So. 2d 607 (Fla. 1944) ("The best-reasoned authority in this country holds that the right to inspect public records carries with it the right to make copies.")

3. **What fees may be charged for copies?**

Chapter 119 does not prohibit agencies from providing informational copies of public records without charge. Op. Att'y Gen. Fla. 90-81 (1990). An agency may, however, charge a fee for copies provided that the amount of the fee does not exceed that authorized by Chapter 119, Florida Statutes, or established elsewhere in the statutes for a particular record. See, *Roesch v. State*, 633 So. 2d 1, 3 (Fla. 1993) (indigent inmate not entitled to receive copies of public records free of charge nor to have original state attorney files mailed to him in prison; prisoners are "in the same position as anyone else seeking public records who cannot pay" the required costs); and *City of Miami Beach v. Public Employees Relations Commission*, 937 So. 2d 226 (Fla. 3d DCA 2006) (labor union must pay costs stipulated in Chapter 119, Florida Statutes, for copies of documents it has requested from a public employer for collective bargaining purposes).

If no fee is prescribed elsewhere in the statutes, section 119.07(4)(a)1., Florida Statutes, authorizes the custodian to charge a fee of up to 15 cents per one-sided copy for copies that are 14 inches by 8 ½ inches or less. An agency may charge no more than an additional 5 cents for each two-sided duplicated copy. Section 119.07(4)(a)2., Florida Statutes. A charge of up to $1.00 per copy may be assessed for a certified copy of a public record. Section 119.07(4)(c), Florida Statutes.

For other copies, the charge is limited to the actual cost of duplication of the record. Section 119.07(4)(a)3., Florida Statutes. The phrase "actual cost of duplication" is defined to mean "the cost of the material and supplies used to duplicate the public record, but does not include the labor cost and overhead cost associated with such duplication." Section 119.011(1), Florida Statutes. An exception, however, exists for copies of county maps or aerial photographs supplied by county constitutional officers which may include a reasonable charge for the labor and overhead associated with their duplication. Section 119.07(4)(b), Florida Statutes. And see, the discussion on the special service charge on page 61.

4. **May an agency charge for travel costs, search fees, development costs and other incidental costs?**
With the exception of county maps or aerial photographs supplied by county constitutional officers, the Public Records Act does not authorize the addition of overhead costs such as utilities or other office expenses to the charge for public records. Op. Att'y Gen. Fla. 99-41 (1999). Thus, an agency may not charge for travel time and retrieval costs for public records stored off-premises. Op. Att'y Gen. Fla. 90-07 (1990). And see, Op. Att'y Gen. Fla. 02-37 (2002) (although an agency may contract with a private company to provide information also obtainable through the agency, it may not abdicate its duty to provide such records for inspection and copying by requiring those seeking public records to do so only through its designee and then paying whatever fee that company may establish for its services).

Similarly, an agency may not charge fees designed to recoup the original cost of developing or producing the records. Op. Att'y Gen. Fla. 88-23 (1988) (state attorney not authorized to impose a charge to recover part of costs incurred in production of a training program; the fee to obtain a copy of the videotape of such program is limited to the actual cost of duplication of the tape). And see, State, Department of Health and Rehabilitative Services v. Southpointe Pharmacy, 636 So. 2d 1377, 1382 (Fla. 1st DCA 1994) (once a transcript of an administrative hearing is filed with the agency, the transcript becomes a public record regardless of who ordered the transcript or paid for the transcription; the agency can charge neither the parties nor the public a fee that exceeds the charges authorized in the Public Records Act).

5. When may an agency charge a special service charge for extensive use of clerical or supervisory labor or extensive information technology resources?

Section 119.07(4)(d), Florida Statutes, states that if the nature or volume of public records to be inspected or copied requires the extensive use of information technology resources or extensive clerical or supervisory assistance, or both, the agency may charge a special service charge which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both. The special service charge applies to requests for both inspection and copies of public records when extensive clerical assistance is required. Board of County Commissioners of Highlands County v. Colby, 976 So. 2d 31 (Fla. 2d DCA 2008). The fact that a request involves the use of information technology resources is not sufficient to incur the imposition of the special service charge; rather an extensive use of such resources is required before the special service charge is authorized. Op. Att'y Gen. Fla. 13-03 (2013).

The term "labor cost" for purposes of the special service charge may include both salary and benefits. Board of County Commissioners v. Colby, supra. However, the statute requires that the special service charge be "reasonable" and based on actual costs. Id. See, Carden v. Chief of Police, 696 So. 2d 772, 773 (Fla. 2d DCA 1996), stating that an "excessive charge" under section 119.07(4)(d), Florida Statutes, "could well serve to inhibit the pursuit of rights conferred by the Public Records Act." See also
Trout v. Bucher, 205 So. 3d 876 (Fla. 4th DCA 2016), rejecting Trout’s contention that the supervisor of elections could charge no more than the hourly rate of the lowest paid employee who could do the work to produce ballots for his inspection.

Section 119.07(4)(d), Florida Statutes, does not contain a definition of the term "extensive." In 1991, a divided First District Court of Appeal upheld a hearing officer’s order rejecting an inmate challenge to a Department of Corrections (DOC) rule that defined "extensive" for purposes of the special service charge. Florida Institutional Legal Services, Inc. v. Florida Department of Corrections, 579 So. 2d 267 (Fla. 1st DCA 1991), review denied, 592 So. 2d 680 (Fla. 1991). The agency rule defined "extensive" to mean that it would take more than 15 minutes to locate, review for confidential information, copy and refile the requested material.

An agency is not ordinarily authorized to charge for the cost to review records for statutorily exempt material. Op. Att’y Gen. Fla. 84-81 (1984). However, the special service charge may be imposed for this work if the volume of records and the number of potential exemptions make review and redaction of the records a time-consuming task. See, Florida Institutional Legal Services, Inc. v. Florida Department of Corrections, 579 So. 2d at 269; and Florida Agency for Health Care Administration v. Zuckerman Spaeder, LLP, 221 So. 3d 1260 (Fla. 1st DCA 2017) (trial court erred by requiring production of documents prior to payment of agency’s invoices because requester “should be required to pay for the cost of searching, review, and redaction of exempted information prior to production”).

A county policy to require an advance deposit “seems prudent given the legislature's determination that taxpayers should not shoulder the entire expense of responding to an extensive request for public records.” Board of County Commissioners v. Colby, 976 So. 2d 31, 37 (Fla. 2d DCA 2008). Accord Morris Publishing Group, LLC, 154 So. 3d 528 (Fla. 1st DCA 2015), review denied, 163 So. 3d 512 (Fla. 2015) (finding agency policy of requiring payment of a deposit before redaction and production of public records to be “facially reasonable”).

An agency may require that a public records requestor pay past due fees for records compiled for a previous request before complying with the requestor’s subsequent request. Lozman v. City of Riviera Beach, 995 So. 2d 1027 (Fla. 4th DCA 2008).

H. WHAT ARE THE OPTIONS IF AN AGENCY REFUSES TO PRODUCE PUBLIC RECORDS FOR INSPECTION AND COPYING?

1. Voluntary mediation program

Section 16.60, Florida Statutes, establishes the open government mediation program as a voluntary alternative for resolution of public access disputes. For more information about mediation, please contact the Attorney General’s Office at the following address and telephone number: The Capitol, PL-01, Tallahassee, Florida 32399-1050; telephone: (850) 245-0140.
2. **Civil action**

a. **Remedies**

A person who has been denied the right to inspect and/or copy public records under the Public Records Act may bring a civil action against the agency to enforce the terms of Ch. 119, Florida Statutes.

Before filing a lawsuit, the petitioner must have furnished a public records request to the agency. *Villarreal v. State*, 687 So. 2d 256 (Fla. 1st DCA 1996), *review denied*, 694 So. 2d 741 (Fla. 1997), *cert. denied*, 118 S.Ct. 316 (1997) (improper to order agency to produce records before it has had an opportunity to comply).

Section 119.11(1), Florida Statutes, mandates that actions brought under Ch. 119 are entitled to an immediate hearing and take priority over other pending cases. *See, Matos v. Office of the State Attorney for the 17th Judicial Circuit*, 80 So. 3d 1149 (Fla. 4th DCA 2012) (“[a]n immediate hearing does not mean one scheduled within a reasonable time, but means what the statute says: immediate”). *See also Clay County Education Association v. Clay County School Board*, 144 So. 3d 708 (Fla. 1st DCA 2014). “The purpose of the hearing is to allow the court to hear argument from the parties and resolve any dispute as to whether there are public records responsive to the request and whether an exemption from disclosure applies in whole or in part to the records.” *Kline v. University of Florida*, 200 So. 3d 271 (Fla. 1st DCA 2016).

Generally, mandamus is the appropriate remedy to enforce compliance with the Public Records Act. *See Chandler v. City of Greenacres*, 140 So. 3d 1080, 1083 (Fla. 4th DCA 2014). *See also, Weeks v. Golden*, 764 So. 2d 633 (Fla. 1st DCA 2000). If the requestor's petition presents a prima facie claim for relief, an order to show cause should be issued so that the claim may receive further consideration on the merits. *Gay v. State*, 697 So. 2d 179 (Fla. 1st DCA 1997).

Mandamus is a "one time order by the court to force public officials to perform their legally designated employment duties." *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996). Thus, a trial court erred when it retained continuing jurisdiction to oversee enforcement of a writ of mandamus granted in a public records case. *Id*. However, it has been recognized that injunctive relief may be available upon an appropriate showing for a violation of Chapter 119, Florida Statutes. *See, Daniels v. Bryson*, 548 So. 2d 679 (Fla. 3d DCA 1989). *And see, Areizaga v. Board of County Commissioners of Hillsborough County*, 935 So. 2d 640 (Fla. 2d DCA 2006) (circuit courts may not refer extraordinary writs to mediation; thus, trial judge should not have ordered mediation of petition for writ of mandamus seeking production of public records).

b. **Procedural issues**

(1) *In camera inspection*
Section 119.07(1)(g), Florida Statutes, provides that in any case in which an exemption to the public inspection requirements in section 119.07(1), Florida Statutes, is alleged to exist pursuant to section 119.071(1)(d) or (f), (2)(d), (e), or (f), or (4)(c), Florida Statutes, the public record or part of the record in question shall be submitted to the trial court for an *in camera* examination.

While section 119.07(1)(g), Florida Statutes, states that an in camera inspection is “discretionary” in cases where an exemption is alleged under section 119.071(2)(c), Florida Statutes, it has been held that an in camera inspection is necessary in order for the court to determine whether the exemption applies to the records at issue. *See Woolling v. Lamar*, 764 So. 2d 765 (Fla. 5th DCA 2000), *review denied*, 786 So. 2d 1186 (Fla. 2001).

While the trial court’s failure to conduct an in camera inspection usually constitutes reversible error, where the petitioner objected to an inspection and thereby precluded the trial judge from conducting “an intelligent review of the documents,” the appellate court was “compelled to affirm” the trial court’s denial of a petition seeking documents relating to a pending criminal investigation. *Althouse v. Palm Beach County Sheriff’s Office*, 89 So. 3d 288 (Fla. 4th DCA 2012).

**(2) Mootness**

In *Puls v. City of Port St. Lucie*, 678 So. 2d 514 (Fla. 4th DCA 1996), the court noted that “[p]roduction of the records after the [public records] lawsuit was filed did not moot the issues raised in the complaint.” *See also Schweikert v. Citrus County*, 193 So. 3d 1075 (Fla. 5th DCA 2016); and *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), *review denied*, 47 So. 3d 1288 (Fla. 2010) (city’s refusal to provide canvassing board minutes until they had been approved by city commission “denied any realistic access for the only purpose appellants sought to achieve—review of the Minutes before the Commission meeting[;]” accordingly, “the damage to appellants was not mooted”).

**(3) Stay**

If the person seeking public records prevails in the trial court, the public agency must comply with the court’s judgment within 48 hours unless otherwise provided by the trial court or such determination is stayed within that period by the appellate court. Section 119.11(2), Florida Statutes. An automatic stay shall exist for 48 hours after the filing of the notice of appeal for public records and public meeting cases. Rule 9.310(b)(2), Florida Rules of Appellate Procedure.

**(4) Attorney fees**

Section 119.12, Florida Statutes, provides that if a civil action is filed against an agency to enforce the provisions of this chapter, the court shall assess and award the reasonable costs of enforcement including reasonable attorney fees against the responsible agency if the court determines that the
agency unlawfully refused to permit a public record be inspected or copied; and
the complainant provided written notice of the public records request to the
agency’s custodian of public records at least 5 business days before filing the
civil action. Notice is not required if the agency fails to prominently post contact
information as provided in the statute. The court must also determine whether
the complainant made the public records request or participated in the civil
action for an “improper purpose.” Cf. State, Department of Economic
Opportunity v. Consumer Rights, LLC, 181 So. 3d 1239 (Fla. 1st DCA 2015) (s.
284.30, F.S., procedures for obtaining attorney’s fees paid by the state or any of
its agencies apply to public records cases).

A successful pro se litigant is entitled to reasonable costs of enforcement. 
So. 2d 1247 (Fla. 1st DCA 2003) (prevailing pro se inmate entitled to an award of costs
including postage, envelopes and copying, in addition to filing and service of process
fees).

Section 119.12, Florida Statutes, is designed to encourage voluntary compliance
with the requirements of Chapter 119, Florida Statutes. The statute “has the dual role
of both deterring agencies from wrongfully denying access to public records and
encouraging individuals to continue pursuing their right to access public
records.” Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee, 189
So. 3d 120, 125 (Fla. 2016). An “unlawful refusal” may include unlawful
conditions or requirements for obtaining public records. Id. And, a delay in
disclosing records can rise to the level of a refusal if “there was no good reason
for the delay.” Consumer Rights, LLC v. Union County, 159 So. 3d 882, 885 (Fla.
1st DCA 2015), review denied, 177 So. 3d 1264 (Fla. 2015). For more information
on this issue, please see the discussion on pages 51 and 52.

In addition to judicial remedies, section 119.10(1)(b), Florida Statutes, provides
that a public officer who knowingly violates the provisions of section 119.07(1), Florida
Statutes, is subject to suspension and removal or impeachment and is guilty of a
misdemeanor of the first degree, punishable by possible criminal penalties of one year
in prison, or $1,000 fine, or both. See, State v. Webb, 786 So. 2d 602 (Fla. 1st DCA
2001).

Section 119.10(1)(a), Florida Statutes, provides that a violation of any provision
of Chapter 119, Florida Statutes, by a public official is a noncriminal infraction,
punishable by fine not exceeding $500. A state attorney may prosecute suits charging
public officials with violations of the Public Records Act, including those violations which
may result in a finding of guilt for a noncriminal infraction. Op. Att’y Gen. Fla. 91-38

I. HOW LONG MUST AN AGENCY RETAIN A PUBLIC
RECORD?

1. Delivery of records to successor
Section 119.021(4)(a), Florida Statutes, 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. See, Maxwell v. Pine Gas Corporation, 195 So. 2d 602 (Fla. 4th DCA 1967) (state, county, and municipal records are not the personal property of a public officer). And see, Op. Att'y Gen. Fla. 09-39 (2009) (delivery of public records to records custodian of successor agency).

2. Retention and disposal of records

Pursuant to section 257.36(6), Florida Statutes, "[a] public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the [Division of Library and Information Services of the Department of State]." This statutory mandate applies to exempt records as well as those subject to public inspection. See, Ops. Att'y Gen. Fla. 94-75 (1994), 87-48 (1987) and 81-12 (1981). Questions regarding record destruction schedules should be referred to the Department of State, Bureau of Archives and Records Management.

February, 2018 edition
Web-based resources at Myfloridalegal.com

1. Training PowerPoints and two hour open government audio presentation
3. Formal and Informal Attorney General Opinions
4. Link to First Amendment Foundation and other open government websites
5. PDF version of Sunshine Manual

I. Public Records Law Overview and Update
A. Scope of Public Records Act

1. Florida’s Public Records Act, Ch. 119, F.S., provides a right of access to the records of state and local governments as well as to records of private entities acting on their behalf.

2. In the absence of statutory exemption, this right of access applies to
   a) 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”
   b) made or received pursuant to law or ordinance or in connection with the transaction of official business
   c) by any agency [includes a private entity “acting on behalf” of a public agency]
   d) which are used to perpetuate, communicate, or formalize knowledge.

Example: NCAA v. Associated Press, 18 So. 3d 1201 (Fla. 1st DCA 2009), review denied, 37 So. 3d 848 (Fla. 2010)

“Records created and maintained by the NCAA are not generally subject to disclosure. However, the documents at issue in this case were examined by lawyers for a public agency, Florida State University, and used in the course of the agency’s business.

Because the documents were received in connection with the transaction of official business by an agency, they are public records. The NCAA has failed to show that an exception applies under state or federal law, and thus, the records must be disclosed.”
Public Records Case Update

   The First DCA affirmed the trial court’s ruling that insurance policy data submitted to the Office of Insurance Regulation (OIR) met the definition of “trade secret” and was exempt from public disclosure requirements.

Points of Interest

1. Section 624.4213(1), F.S., establishes a procedure to be followed for companies seeking to have certain information submitted to the Office of Insurance Regulation deemed an exempt “trade secret.”
2. When State Farm disagreed with OIR’s position, the company filed a complaint in circuit court seeking a declaratory judgment that the submitted data constituted a trade secret, and an injunction to prevent OIR from making it public.
3. The parties submitted a joint “statement of standards” to the court to determine whether the challenged information meets the definition of “trade secret.”

Public Records Case Update

   Conclusion: Trial court erred by requiring AHCA to produce records within 48 hours despite AHCA’s claim that the records could not be reviewed for redaction of exempt information within that time frame.
   The trial court also erred by requiring AHCA to produce the records prior to payment of fees. “Florida courts have consistently held that where a service charge is warranted, an agency is authorized to require payment before producing the records.”
Public Records Case Update

3. **Surterra Florida, LLC v. Florida Department of Health**, 223 So. 3d 376 (Fla. 1st DCA 2017)

   Conclusion: Trial court’s conclusion that identities and related information of investors in medical cannabis business did not meet definition of “trade secret” supported by substantial competent evidence.

   Trial court’s findings that list of consultants was not a trade secret reversed and remanded so that trial court can make more specific findings on this issue.

Public Records Case Update

4. **Major v. Hallandale Beach Police Department**, 219 So. 3d 856 (Fla. 4th DCA 2017)

   Conclusion: Appellate court affirmed the trial court order denying petition for writ of mandamus. However, the court found that the lower court decision was internally inconsistent, because the trial judge denied the petition due to Major’s failure to pay for the records. However, the police department had responded to the request by saying it did not have the records. The appellate court then noted that Major had attached to the appendix on appeal a portion of a deposition relating to the records, suggesting that the records could have existed. The rules require that a petitioner attach any record supporting the petition. The appellate court said that if Major refiled his petition attaching this record that the trial judge would then have to decide whether the new petition would require an evidentiary hearing.

Public Records Case Law Update

5. **Braddy v. State**, 219 So. 3d 803 (Fla. 2017)

   Conclusion: Materials such as “handwritten attorney notes, draft documents, and annotated copies of decisional caselaw” do not constitute public records.
Public Records Case Update


Conclusion: City violated public records law by failing to conduct a timely, good-faith search for responsive records located on private devices. Also by “failing to maintain electronic communications in a manner that prevents their accidental destruction or deletion by individual city officials.” Also by “failing to produce public records responsive to the request until after threatened with litigation, being sued and being ordered by the Court to conduct a proper search.”


Issue: Whether s. 119.071(2)(m), F.S., which makes the identity of a “witness” to a murder confidential “for 2 years after the date on which the murder is observed by the witness” shields the identity of two individuals whose car was hit by bullets fired from a shooter who killed a man as he was driving on I-95. The incident took place in February 2017. The individuals were following the suspect’s car in an effort to obtain the tag number.
Public Records Case Update

- The 4th DCA found that the trial court had ruled correctly in April 2017 by rejecting PBSO’s claim that the identity of the individuals could be withheld as criminal investigative information, agreeing with the trial judge that the identity of victims (unless sex offense or child abuse) was excluded from the definition of criminal investigative information that existed at that time. But, due to the 2017 Legislature’s enactment of a new law providing confidentiality for the identity of murder witnesses for two years, the lower court decision was no longer valid. The new law does not exclude witnesses who were also victims as in this case and applies retroactively.

Public Records Case Update

- B. City of Homestead v. McDonough, 42 F.L.W. D3351 (Fla. 3d DCA November 1, 2017)

   Facts: In April 2014, McDonough filed a Notice of Intent to file a claim against city based on a 2012 incident involving him and city police officer. While this was pending, McDonough filed a complaint against the officer for defamation for alleged actions taken while the officer was off-duty. City was not named in the complaint. In October 2015, McDonough filed a public records request for documents relating to city’s decision to retain a law firm to defend the officer in the defamation action. The city denied the request, claiming that they were exempt from disclosure under Ch. 119, and ss. 768.28(16)(b), and 90.502, F.S. All 4 disputed emails were in the risk management claim file and were generated in July 2015 and placed in the risk management file prior to the public records request.

Public Records Case Update, cont’d.

- Conclusion: The trial judge found that the Notice of Intent claim and the action against the police officer were “inextricably intertwined.” As to the disputed 4 emails, the appellate court agreed with the trial court that 1 and 2 were exempt based on the 768.28(16)(b) exemption. However, the appellate court reversed the trial court’s determination that 3 and 4 could be disclosed because even though they were in the claims file, the city would not be prejudiced by disclosure of the records. According to the appellate court, this conclusion “ignores the plain language of the statute indicating the entire claims file is exempt from disclosure until resolution of the claim or claims.” As stated by the DCA, “all of the documents requested are privileged and not subject to production pursuant to Chapter 119, or section 768.28(16)(b), F.S.”
Attorney General Opinion Update

1. AGO 17-05 to Legal Counsel to Leon County Property Appraiser, November 22, 2017
   Question: May a county property appraiser disclose property information from the property appraiser’s database that is exempt from disclosure under the Florida Public Records Act to a municipality seeking to provide notice to alleged code violators in accordance with s. 162.12(1)(a), F.S.
   Answer: A property appraiser may disclose the address of an alleged violator of the local code when a code inspector or code enforcement board is attempting to provide notice regarding the violation as required by s. 162.06, F.S.

Sunshine Law Overview and Update

A. Scope of Sunshine Law—Section 286.011, F.S.
   The Sunshine Law applies to any gathering of two or more members of an elected or appointed public collegial board when they meet to discuss any matter which will foreseeably come before that board for action. Advisory committees can be included even though their powers are limited to making recommendations. Staff committees can be subject to the Sunshine Law if they have been delegated some “decision-making” authority (such as the authority to screen and rank proposals) as opposed to mere fact-finding or information-gathering.
A. Scope of Sunshine Law—Section 286.011, F.S.

Example: Sarasota Citizens for Responsible Government v. City of Sarasota, 48 So. 3d 775 (Fla. 2010)

“All governmental entities in Florida are subject to the requirements of the Sunshine Law unless specifically exempted.” However, a county administrator’s discussions with staff and consultants while negotiating a memorandum of understanding with a baseball team did not violate the Sunshine Law because the administrator’s “so-called negotiations team only served an informational role . . . .”

B. Requirements of the Sunshine Law

1) Meetings must be open to the public
2) Reasonable public notice of such meetings must be given; and
3) Minutes of the meetings must be promptly prepared and open to public inspection.

Note: Although not a part of the Sunshine Law, s. 286.0114, F.S., requires, subject to limited exceptions, that public boards provide an opportunity for public comment prior to taking official action on a proposition. Boards are authorized to adopt rules or policies that provide time limits for speakers; procedures for allowing a representative of a group to speak, as opposed to all members of a large group; and procedures or forms for an individual to use to inform the board of a desire to be heard, to indicate his/her position and a representative; and designate a specified period of time for public comment.
Sunshine Law Case Update

1. National Council on Compensation Insurance, Inc. v. Fee, 219 So. 3d 172 (Fla. 1st DCA 2017)

Conclusion: Trial court erred in concluding that the NCCI (an insurance rating organization) was subject to the Public Records Act. The appellate court also reversed the trial court's conclusion that the NCCI and OIR violated the Sunshine Law.

Sunshine Law Case Update

2. Citizens for Sunshine v. City of Sarasota, No. 2013 CA 007532 (Fla. 12th Cir. Ct. July 8, 2016), per curiam affirmed, 225 So. 3d 810 (Fla. 2d DCA 2017). (online on myfloridalegal.com)

The judge found that a city commissioner did not violate the Sunshine Law when she attended a non-public event sponsored by downtown merchants concerned about the homeless population, even though another commissioner was also in attendance. The city commissioner spoke to the merchants but did not speak to the other commissioner. The court found that the commissioner's “passive attendance” at the event did not constitute a “meeting” subject to the Sunshine Law.

Points of Interest

1. The judge declined to follow the Fifth District's decision in Finch v. Seminole County School Board, 995 So. 2d 1068 (Fla. 5th DCA 2008), where the court determined that a school board violated the Sunshine Law when school board members took a bus tour of neighborhoods affected by a proposed rezoning, even though the board members did not talk to each other.

2. The judge said that "one cannot harmonize Finch with the large body of Florida law that defines 'meetings' under the Sunshine Law as gatherings of a governmental entity for the purpose of dialogue, decision, and action about a subject within the entity's purview."
Sunshine Law Case Update

3. Carlson v. State, Department of Revenue, 227 So. 3d 1261 (Fla. 1st DCA 2017)

Members of an agency “Evaluation Team” who independently reviewed proposals were not required to hold a public meeting because the Team members did not rank the competitors nor exclude any from consideration of the ultimate decider, the “Negotiation Team.”

Portion of the meeting of the “Negotiation Team” at which vote was taken on award of contract was within the portion of the meeting at which negotiation strategies were discussed for purposes of the s. 286.0113(2)(b), F.S., exemption.

Sunshine Law Case Update

Carlson v. Department of Revenue, continued.

The “‘exempted ‘portion’ includes not only the negotiation-strategies discussions themselves, but also meeting activities inextricably intertwined with those discussions.” Department’s “technological inability” to provide audio recordings of two exempt meetings did not violate the Sunshine Law where there was no allegation of bad faith or “anything beyond the technological misfortune that sometimes accompanies modern life.”

Sunshine Law case update

4. AIRBNB, Inc. v. City of Miami, No. 2017-008999 CA 01 (Fla. 11th Cir. Ct. April 27, 2017), appeal pending, No. 3D17-1213 (Fla. 3d DCA, filed May 30, 2017). Oral argument 2/12/2018

Conclusion: The practice of the city commission requiring city residents to provide their name and address prior to being able to speak at city commission meetings violates their rights under s. 286.0114, F.S., and the First Amendment to the US Constitution.
Sunshine Law Case Update

5. Linares v. District School Board of Pasco County, No. 17-00230 (Fla. 6th Cir. Ct. January 10, 2018). Online at myfloridalegal.com

Facts: School superintendent directed Williams, the Director of Planning for the School Board, to form a committee to provide a recommendation to the Superintendent for redrawn school attendance boundaries. The Superintendent “would then use this recommendation to make his own recommendation to the School Board.” Williams formed an advisory Boundary Committee consisting of himself, principals from the affected schools and two parents from each school selected by the principals. The Committee held public meetings. The School Superintendent adopted the Committee’s recommendation with only a “slight modification.” The superintendent later recommended that the board postpone a decision on some of the changes for one year and approve the rest. The school board adopted this recommendation with no discussion.

Sunshine Law Case Update

Linares, continued.

Conclusions: The Boundary Committee violated the Sunshine Law when committee members exchanged emails and conversations about committee business outside of a noticed, public meeting. The court rejected the school board’s argument that the Sunshine Law only prevented private discussions of where the boundaries would be drawn, saying that this interpretation was “too narrow.” Even though Williams was a non-voting member, the Sunshine Law applied to him. The law applied to the Committee members once they were appointed; the court rejected the argument that the law did not apply until the first meeting. The use of “breakout sessions” where members of the committee split up into discussion groups violated the Sunshine Law because members of the public could not hear all the discussions. The school board failed to have a full open discussion that could have “cured” the violation. The school board also failed to comply with the notice provisions of s. 286.0105, F.S., in all meeting notices.

Sunshine Law Case Update

6. City of St. Petersburg v. Wright, No. 2D16-3361 (Fla. 2d DCA February 14, 2018).

Background: Homeless persons challenged the constitutionality of the city’s trespass ordinance. On September 28, 2011, the 11th Circuit affirmed the district court’s dismissal of most of the claims except for a procedural due process claim about the trespass warning portion. On October 13, 2011, the City held a shade meeting which included extensive discussion about amending the ordinance to address the due process issue and reinstate trespass warnings. After the shade meeting was over, the city voted in public session to begin amending the ordinance. The amended ordinance was finally adopted on October 18, 2011, and the lawsuit was ultimately dismissed. In November 2013, Wright challenged the trespass warning section of the ordinance, alleging that the 2011 shade meeting violated the Sunshine Law.
Sunshine Law Update

• Conclusion: The trial judge incorrectly determined that the shade session did not violate the Sunshine Law. “The transcript of the shade meeting conclusively reflects that it was not ‘confined to settlement negotiations or strategy sessions related to litigation expenditures’” as required by the exemption. “Rather the attorneys and council members reviewed the terms of the draft amendment, discussed the urgency of and policy reasons for passing the amendment so that the City could resume enforcement of [the ordinance], and expressed their consensus in favor of the amendment. In short, the shade meeting was used to crystallize a secret decision to a point just short of ceremonial acceptance in violation of Florida’s Sunshine Law.” The court agreed with Wright’s contention that the trespass warning section was “invalid because it was conceived at the October 13, 2011 nonpublic shade session in violation of Florida law.”

Sunshine Law AGOs

• 1. AGO 17-01 to Lonnie Groot, Special Magistrate for Seminole County Code Enforcement Board, March 9, 2017

• Conclusion: Section 286.0114, F.S., does not require that members of the public be given a reasonable opportunity to be heard at quasi-judicial code enforcement hearings held by a special magistrate pursuant to authority delegated from the county code enforcement board because s. 286.0114(3)(d) states that the statute does not apply to a “meeting during which the board . . . is acting in a quasi-judicial capacity.”

2018 Legislative Highlights

• Summary of open government legislation
A LOCAL GOVERNMENT PRACTITIONER'S GUIDE TO UNDERSTANDING ETHICS LAWS AND NAVIGATING YOUR CLIENTS THROUGH THEM IN STORMY SEAS

By

Andrew Lannon, Palm Bay
Patricia D. Smith, Palm Bay
Before we begin, some ground rules...

Patricia and Andy teach these subjects all over Florida and practice in these areas of law daily. There is only one lesson being taught during the next 1.5 hours.

The one question the answer to which resolves all ethics problems?

Before you act, take a moment and ask yourself this question.

"How would this appear in a television news segment or a newspaper article?"

If you even have an answer, that is not good!

Stop, reboot and reroute.
Thankfully, most of this worry is unnecessary.

Why?

Because . . .

"The Ethics Commission is comprised of good [in fact, awesome] people." - Andrew Lannon

Again, that is spelled "L - A - N - O - N."

In all seriousness, let common sense prevail.

If the Ethics Commission strictly and rigidly enforced the ethics laws with no room for error, no one would ever leave the private sector and work for the people.

During the next 1.5 hours, Patricia and Andy are going to do 2 things:

1. Show you the eight (8) basic categories of ethics laws.
2. Share with you stories of public officials who had a momentary lapse in judgment . . . allegedly.

Because these are public officials and Patricia and Andy are lawyers, they are going to cite to the source of each and every cautionary tale. This is commonly referred to in the industry as "CYA."

We have formed NO opinion about any of the following individuals or events.

Because this program is being recorded and simultaneously webcast, Patricia and Andy ask that you write down any questions you have and either approach us after this presentation has concluded or e-mail us through LinkedIn.
This is the penultimate introductory slide.

We are almost set to begin.

Here are the last few rules.

Andy has posted a number of slides on these topics on his LinkedIn page.
Connect with Andy on LinkedIn and view these posts for free as needed.

As always, if you enjoy this presentation, please tell the Florida Bar all about your
immense satisfaction, never-ending joy and outpouring of love.

Conversely, if you are dissatisfied with any portion of this presentation, please be sure to...

LET US BEGIN!

3 Fundamentals of Florida’s Ethics Laws

1. Public office = public trust;
2. Avoid any situation which tempts you to violate the law; and
3. Never serve 2 masters.
Solicitation or Acceptance of Gifts

What is the law?

SOLICITATION OR ACCEPTANCE OF GIFTS.— 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.


Rodolfo Llanes
What is the law?

DOING BUSINESS WITH ONE'S AGENCY.—No employee of an agency acting in his or her official capacity as a purchasing agent, or public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, lease, or sell any realty, goods, or services for his or her own agency from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest. Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer's or employee's own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision. The foregoing shall not apply to district offices maintained by legislators when such offices are located in the legislator's place of business or when such offices are on property wholly or partially owned by the legislator. This subsection shall not apply to contracts entered into prior to:

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


Jennifer Carroll

J. Jerome Taylor
Orlando Martinez De Castro

Unauthorized Compensation

Also known as “Gift for Influence”

What is the law?

UNAUTHORIZED COMPENSATION.—No public officer, employee of an agency or local government attorney 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.

Amy Connolly

Misuse of Public Position

What is Corruption?

Misuse of public power for private gains.

- A form of dishonest or unethical conduct by a person entrusted with a position of authority, often to acquire personal benefit.

What is the law?

MISUSE OF PUBLIC POSITION. — 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 in his or her possession or control, as a public officer or employee, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.05.

What is the law?

CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.—

(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; no officer or employee of an agency shall 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.

1. When the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by this section.

2. When the agency referred to is a legislative body and the regulatory power over the business entity resides in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a public officer or employee of a legislative body shall not be prohibited by this subsection or be deemed a conflict.

(b) This subsection shall not prohibit a public officer or employee from practicing in a particular profession or occupation when such practice by persons holding such public office or employment is required or permitted by law or ordinance.

What is the law?

Disclosure or Use of Certain Information

— 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

What is the law?

(a) 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. 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.

(b) However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357, or an officer of an independent special taxing district elected on a one‐acre, one‐vote basis, is not prohibited from voting, when voting in said capacity.

Anti-Nepotism

Also known as "restriction on employment of relatives"

What is the law?

Restrictions on employment of relatives — 21. A public official may not appoint, employ, promote, or advance any individual who is a relative of the public official to any position in which the official has a position of influence or control. This subsection shall not apply to any individual who is a member of the public official's immediate family, including any individual related to the public official by blood or marriage. This subsection shall not apply to any individual who is a member of the public official's immediate family, including any individual related to the public official by blood or marriage.


Jerry Niles

GARFIELD COUNTY SHERIFF

JERRY NILES
We hope you have enjoyed this presentation.
ACT 1, SCENE 1, THE ETHICS COMPLAINT: SPOTLIGHT ON MISUSE AND NEPOTISM

By

Betsy Daley, Tallahassee
ACT 1, SCENE 1,
THE ETHICS COMPLAINT:

SPOTLIGHT
ON MISUSE
AND NEPOTISM

Betsy Daley
Senior Attorney
Florida Commission on Ethics
(850) 488-7864

ETHICS COMPLAINT

- Complaint authorized
  - Article II, Section 8, Fla. Const.
- Complaint process codified
  - Section 112.3124, F.S.
- Complaint process rules
  - Chapter 34-5, F.A.C.

LEGAL SUFFICIENCY

- Did Complainant sign complaint in presence of notary?
- Is Respondent subject to Code of Ethics?
- Do allegations in complaint include facts supporting violation of Code of Ethics?
**PROBABLE CAUSE**
- Order to Investigate
- Report of Investigation (ROI)
- Advocate's Recommendation (Ad Rec)
- Public Report (if no probable cause found)
- Order Finding Probable Cause
- Final Order and Public Report

**REFERRAL**
A referral is a complaint submitted by a specified government entity:
- The Governor’s Office
- The Florida Department of Law Enforcement
- A State Attorney
- A U.S. Attorney

**PENALTIES**
Section 112.317, F.S.
- Public censure and reprimand
- Civil penalty not to exceed $10,000
- Restitution
- Removal from office or dismissal from employment
ATTORNEY FEES
Section 112.317(7), F.S.
Attorney fees available for Respondent if Commission determines Complainant filed complaint with:
- Malicious intent to injure Respondent's reputation,
- Knowingly filed with reckless disregard for truth or falsehood of allegations, AND
- Material to violation of Code of Ethics.

MISUSE OF PUBLIC POSITION
~112.313(6), F.S.
Corruptly use or attempt to use . . .
- public position or resources
To secure special benefit or privilege . . .
- for yourself or others

Corruptly . . .
- Conduct inconsistent with proper performance of duties,
- . . . knowing conduct is wrong, and
- . . . intending to gain personal privilege, benefits, exemption.
- ~ Blackburn v. State, Commission on Ethics, 589 So. 2d 431 ( Fla. 1st DCA 1991)
**Bad Behavior?**

- Misuse is NOT merely:
  - Poor judgment
  - Lying, incompetence, or negligence
  - Wasting resources
  - Rude or unprofessional behavior

**What's the benefit?**

- Economic benefit
- Sexual favors (via harassment)
- Avoidance of punishment
- A service or favor

**Misuse can be . . .**

- Knowingly using public position to threaten, intimidate, apply pressure
- Knowingly using public personnel, money, or equipment for private purposes
**Misuse of Inside Information**  
~ 112.313(8), F.S.
- Current and former officials/employees
- Information gained through position, not available to public
- Used for personal gain or benefit

**Inside info**
- Law does not prohibit use of one’s general expertise or skill, such as technology expertise gained while in a public job . . .
- But bars private profit from sharing information about a particular government project

**Anti-Nepotism Law**  
~ 112.3135, F.S.
- Applies if you have:
  - Authority, by law or delegated . . .
  - To appoint, employ, promote, advance, or recommend . . .
- Individuals for work in your agency
- NOT “mere approval of budgets”
**Prohibits . . .**

- Appointing, employing, promoting, or advancing your relative
- Recommending your relative for appointment, employment, promotion, or advancement
- Includes authority as a member of a collegial body

**Restriction on Employment of these Relatives:**

- Spouse
- Parents
- Siblings
- Children
- Aunts, Uncles, First Cousins
- Nieces, Nephews
- Half-Siblings
- In-Laws: Father, Mother, Brother, Sister
- Step-relatives: Father, Mother, Siblings, Children

**Non-relatives**

- Your mother’s sister’s husband is NOT your relative for purposes of anti-nepotism law
  ~ CEO 99-5
- ‘Significant others’ are NOT considered to be relatives
  ~ CEO 02-3
Relatives may work in the same office.

Relatives may supervise each other - though that might not be a great idea.

Commission has ‘grandfathered’ certain nepotism situations.

---

Board cannot vote to approve appointment or hiring of a board member’s relative, even if the related board member does not vote.

Section 112.3135(2)(a), F.S.

Except: Board may vote re relative of member IF board governs municipality with <35,000 population AND appointment is to board with NO powers re zoning or land-planning.

---

Florida Commission on Ethics
325 John Knox Road, Suite 200
Tallahassee, FL 32303

(850) 488-7864
www.ethics.state.fl.us

---

3.7
(ETHICS) A HIKER'S GUIDE TO VOTING CONFLICTS: FINDING (AND STAYING) ON THE TRAIL

By

Gray Schafer, Tallahassee
FORM 8A  MEMORANDUM OF VOTING CONFLICT
FOR STATE OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME

NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE

MAILING ADDRESS

NAME OF STATE AGENCY

CITY

COUNTY

MY POSITION IS: ☐ ELECTIVE ☐ APPOINTIVE

DATE ON WHICH VOTE OCCURRED

WHO MUST FILE FORM 8A

This form is for use by any person serving at the State level of government on an appointed or elected board, council, commission, authority, committee, or as a member of the Legislature. It applies 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 and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

ELECTED OFFICERS:

As a person holding elective state office, you may not vote on a matter that you know would inure to your special private gain or loss. However, you may vote on other matters, including measures that would inure to the special private gain or loss of a principal by whom you are retained (including the parent or subsidiary or sibling organization of a principal by which you are retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. If you vote on such a measure or if you abstain from voting on a measure that would affect you, you must make every reasonable effort to disclose the nature of your 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. If it is not possible for you to file a memorandum before the vote, the memorandum must be filed with the person responsible for recording the minutes of the meeting no later than 15 days after the vote.

For purposes of this law, a "relative" includes only your 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 you 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).

A member of the Legislature may satisfy the disclosure requirements of this section by filing a disclosure form created pursuant to the rules of the member’s respective house if the member discloses the information required by this subsection, or by use of Form 8A.

APPOINTED OFFICERS:

As a person holding appointive state office, you are subject to the abstention and disclosure requirements stated above for Elected Officers. You also must disclose the nature of the conflict before voting or before making any attempt to influence the decision by oral or written communication, whether made by you or at your direction.

For purposes of this law, a "relative" includes only your 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 you 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).

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.

• 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 OR VOTE 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 STATE OFFICER'S INTEREST

I, ____________________________________________, hereby disclose that on ______________________________, 20 __:

(a) A measure came or will come before my agency which (check one or more)
   - 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, ______________________________, by whom I am retained; or
   - inured to the special gain or loss of ______________________________, which is the parent, subsidiary, or sibling organization 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:

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

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.
## FORM 8B  MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

<table>
<thead>
<tr>
<th>LAST NAME-FIRST NAME-MIDDLE NAME</th>
<th>NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE</th>
</tr>
</thead>
<tbody>
<tr>
<td>MAILING ADDRESS</td>
<td>THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:</td>
</tr>
<tr>
<td>CITY</td>
<td>CITY</td>
</tr>
<tr>
<td>DATE ON WHICH VOTE OCCURRED</td>
<td>MY POSITION IS:</td>
</tr>
</tbody>
</table>

## 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 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 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 would inure to his or her special private gain or loss. Each elected or appointed local officer also MUST ABSTAIN from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a 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 (CRAEs) under Sec. 163.355 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 are not prohibited by Section 112.3143 from otherwise participating 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 page 2)
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

I, _______________________, hereby disclose that on _________________________, 20___:

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

___ 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, __________________________, by whom I am retained; or
___ inured to the special gain or loss of __________________________, which is the parent subsidiary, or sibling 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:

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

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.

Gray Schafer
Senior Attorney
Florida Commission on Ethics
April 2018

The Map – Section 112.3143

• Section 112.3143 is the portion of the Code of Ethics addressing voting conflicts
• Two Sections:
  o Section 112.3143(2)(a) – Applies to State Officers
  o Section 112.3143(3)(a) – Applies to Local Officers

To Whom Does This Apply?

• “Public Officers” — Persons elected or appointed to hold office in an agency, including persons serving on an advisory body
• If you’re a member of a collegial body at the local or state level, the statute will apply to you
“Special” Private Gain (or Loss)

- Section 112.3143 does not apply to all situations that might result in gain or loss to a public officer – the gain or loss must be “special”
- Requires an economic benefit or harm
- Applies to votes affecting the public officer, as well as to votes affecting their principals, relatives, and business associates

Landmarks – What is a Voting Conflict for a State Officer?

- A State elected or appointed officer:
  - May not vote on any measure that he or she knows will inure to his or her special private gain or loss

Landmarks – What is a Voting Conflict for a Local Officer?

- A Local elected or appointed officer:
  - Possibility #1 – May not vote on any measure which would inure to his or her special private gain or loss
  - OR
What is a Voting Conflict for a Local Officer?

- Possibility #2 – A measure which the local officer knows will inure to the special private gain or loss of:
  - A principal by whom he/she is retained;
  - A parent organization or subsidiary of a corporate principal by whom the officer is retained;
  - A relative;
  - A business associate

Who is a “Principal?”

- An employer (CEO 78-27)
- A client of a legal, accounting, insurance, or other professional practice
- A corporation for which the officer serves as a compensated director

Who is a “Relative?”

- Father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law
- Note: This definition is different than the similar definitions of “relative” in the anti-nepotism and gifts laws
**What is a “Business Associate?”**

- A person or entity who is carrying on a business enterprise with the public officer, regardless of the form of the business
- Key Question #1 – Are they engaging in a common commercial or entrepreneurial pursuit?
- Key Question #2 – Is this a current, ongoing business relationship?

**Being a Cautious Hiker – Three Considerations**

(1) What is the size of the affected class?

(2) Is the gain or loss here remote and/or speculative?

(3) Is this merely a preliminary or procedural measure?

**Three Considerations – Size of the Affected Class**

- “Special private gain or loss” will depend on the size of class of persons who are similarly affected by the vote
- The larger the class size, the less likely "special private gain or loss" will be found
- The smaller the class size, the more likely "special private gain or loss" will be found
Three Considerations – Remote or Speculative

• Is the gain or loss so remote or speculative that the measure cannot be said to inure to the officer's gain or loss?

• Will hinge on the facts of each individual case

Three Considerations – Preliminary or Procedural

• Some measures are simply procedural or preliminary (to later actions that would result in actual gain or loss)

• Other measures, while procedural in nature, are substantive in effect and will inure to the officer's gain or loss

End of the Trail – How to Respond to a Voting Conflict

• Are you a state officer or a local officer?

• Are you elected or appointed?
State Elected or Appointed Officers

- All state officers with a voting conflict must:
  1. Abstain from voting; and
  2. File Form 8A within 15 days of the vote
- If appointed, the officer cannot participate in any discussion without first disclosing the conflict

Local Elected or Appointed Officers

- All local officers with a conflict must:
  1. Abstain from voting;
  2. Publicly disclose the conflict prior to the vote; and
  3. File Form 8B within 15 days of the vote
- If appointed, the officer must disclose the conflict before participating in any discussion

Further Trail Advice

- If you have more than one conflict on a particular vote, be sure to disclose them all on your Form 8A or Form 8B
- Section 112.313(5) – If conflict arises concerning a client of your legal practice, you must disclose the nature of the conflict “in such a way as to provide the public with notice of the conflict”
- Voting conflict statute does not require you to leave the room
Exceptions
• You can vote if the “principal by whom you are retained” is a public agency
• You can vote if you are a commissioner of a community redevelopment agency or a one-acre, one-vote officer special district officer
• You can vote on measures affecting your salary, expenses, and compensation as provided by law

Related Issues
• Section 286.012 requires specific officers to vote, unless “there is, or appears to be, a possible conflict of interest . . .”
• Under Chapter 120, an agency head may be disqualified from serving in a particular proceeding for bias or other just cause

Thank You!
Contact Info:
Gray Schafer – Senior Attorney
schafer.grayden@leg.state.fl.us
Florida Commission on Ethics
325 John Knox Road
Building E, Suite 200
Tallahassee, Florida 32303
(850)-488-7864
(ETHICS) SECOND FIDDLES AND PARACHUTES: CONFLICTING BUSINESS RELATIONSHIPS AND POST-PUBLIC SERVICE RESTRICTIONS

By

C. “Chris” Christopher Anderson, III, Tallahassee
I. PERSONS GOVERNED BY THE ETHICS LAWS; MANDATORY ETHICS TRAINING

A. Public Officers

1. A "public officer" is defined in F.S. 112.313(1) and 112.3143(1)(b) to include persons "elected or appointed to hold office in any agency, including any person serving on an advisory body." One can be "appointed" by various means (CEO 02-15). CEO 16-5 found that one privately employed by the professional association of a District Medical Examiner (as opposed to the District Medical Examiner and Associate Medical Examiners) was not a public officer.

2. Officers and directors of nonprofit corporations organized under Ch. 617, F.S. have been found not to be public officers subject to the Code of Ethics. CEO 84-17, CEO 91-41. However, Chapter 2009-126, L.O.F., created F.S. 112.3136, subjecting 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, to a number of provisions of the code of ethics. CEO 10-1. In a particular situation, neither a hospital authority's financial services firm nor the firm's personnel were found to be subject to F.S. 112.3136. CEO 09-17.

3. Members of advisory board of city-operated charter school are public officers. CEO 99-2. However, in a particular context, officers and directors of nonprofit governing organization of a charter school were not found to be public officers. CEO 99-10. But note that Chapter 2009-214, L.O.F., amended F.S. 1002.33 to make members of charter school governing boards, including governing boards of schools operated by a private entity, subject to F.S. 112.313(2), (3), (7), and (12) and F.S. 112.3143(3), of the Code of Ethics. Also, charter school personnel in schools operated by a municipality or other public entity have been made subject to F.S. 112.3135 (the anti-nepotism law). Further, certain charter school personnel in a charter school operated by a private entity have been made subject to restrictions like the restrictions of F.S. 112.3135, but apparently without the administration of the restrictions being placed in the commission on ethics. F.S. 1002.33(24) and (26); F.S. 1002.33(26)(c).

4. See F.S. Chapter 288 regarding the president, senior managers, and members of the board of directors of Enterprise Florida, Inc., and the officers and members of the divisions of Enterprise Florida, Inc., the subsidiaries of Enterprise Florida, Inc., corporations created to carry out the missions of Enterprise Florida, Inc., and corporations with which a division
is required by law to contract to carry out its missions, being subject to certain ethics laws. Additionally, see Chapter 2017-233, L.O.F., regarding the Florida Tourism Industry Marketing Corporation.

5. As to Citizens Insurance board members, Citizens Insurance senior managers, and the Citizens Insurance executive director, see F.S. 627.351(6). CEO 14-07.
6. See F.S. 155.40(14) regarding governing board members of public hospitals and sales or leases of such hospitals.
7. Members of community alliances are subject to the Code of Ethics. F.S. 20.19(5)(h).
8. See F.S. 445.007 regarding local workforce development boards.
9. See F.S. 627.311 regarding senior managers, officers, and members of the board of governors of joint underwriters and joint reinsurers.
10. See Chapter 288 F.S. regarding Triumph Gulf Coast, Inc.
12. See F.S. 626.9931, regarding the Interstate Insurance Product Regulation Commission.
14. Members of the board of directors of Florida Is For Veterans, Inc., are subject to F.S. 112.313, F.S. 112.3135, and F.S. 112.3143; are required to file financial disclosure; and are potentially subject to a possible misdemeanor penalty for having an interest in certain business of the corporation during, and for two years following, their board service. In addition, employees of the corporation "shall comply with the Code of Ethics for Public Officers and Employees under part III of chapter 112," and corporation staff must refrain from having interests regarding the corporation's business both during and after their service for the corporation. F.S. 295.21(4) and (7), as created by Chapter 2014-1, L.O.F.
15. Appointees to the Florida Coordinating Council for the Deaf and Hard of Hearing must attend, prior to serving on the Council, orientation training that includes, but is not limited to, the Code of Ethics and conflict of interest laws. F.S. 413.271.
16. Any special district as defined in F.S. 189.012 is an "agency." F.S. 112.312(2), as amended by Chapter 2014-22, L.O.F. However, special districts appear to have been within the prior definition of "agency." Newly elected or appointed members of governing bodies of special districts may have available to them education programs that include courses on the Code of Ethics. F.S. 189.063. See also Chapter 2016-22, L.O.F.
17. Members of the Technology Advisory Council "shall be governed by the Code of Ethics for Public Officers and Employees as set forth in part III of chapter 112, and each member must file a statement of financial interests pursuant to s. 112.3145." F.S. 20.61.
18. Members of the executive council of the Florida Clerks of Court Operations Corporation have been made subject to some provisions of the Code of Ethics. F.S. 28.35, as amended by Chapter 2014-183, L.O.F.
19. Citizen support and direct-support organizations created or authorized pursuant to law must adopt their own ethics codes. F.S. 112.3251, created via Chapter 2014-183, L.O.F. Expenditures of juvenile justice system direct-support organizations may not be used for the purpose of lobbying as defined in s. 11.045. F.S. 985.672.
20. Water Management District lobbyists have to be registered. F.S. 112.3261, new via Chapter 2014-183, L.O.F.
23. See Chapter 2014-254, L.O.F. (CS CS HB 1445), a local bill, concerning the Citrus County Hospital Trust.
24. See Chapter 2016-263, L.O.F., regarding the City of Webster.
25. The Florida Housing Finance Corporation is subject to F.S. 112.313 but not to F.S. 112.3143. CEO 17-07.
28. Chapter 2017-200, L.O.F., regarding the Gainesville Regional Utilities Authority.
29. Chapter 2017-206, L.O.F., regarding the East Nassau Stewardship District.
31. Chapter 2017-221, L.O.F., regarding the Pace Fire Rescue District.

B. Public Employees
1. The term "employee" is not defined in the Code of Ethics, but the First District Court of Appeal has applied in an ethics context the same definition of "employee" as is used in tort actions. Wright v. Commission on Ethics, 389 So.2d 662 (Fla. 1st DCA 1980).
2. "Independent contractors" are not employees and therefore are not governed by provisions in the Code that are applicable to public employees. CEO 81-48, CEO 81-61. Also, see CEO 83-2 regarding a "contract city manager." However, see this outline below regarding "local government attorneys," and above regarding F.S. 112.3136. An adjunct professor at a State University can be an independent contractor, rather than an employee. CEO 77-132. CEO 16-5 found an employee of a certain District Medical Examiner's company not to be a public employee.
3. See CEO 99-10 and F.S. 1002.33(24) and (26) regarding certain charter school employees.

C. Candidates for public office [defined in F.S. 112.312(6) to mean any person who has filed financial disclosure and qualification papers, has taken the candidate's oath, and seeks to become a public officer by election] are subject to a limited number of Code provisions; and successful former candidates who have not yet taken office are subject to the gifts law contained in F.S. 112.3148.

D. "Local government attorneys" (see below) also are subject to a limited number of Code provisions.

E. Constitutional officers are required by F.S. 112.3142 (new, via Chapter 2013-36, L.O.F.) to complete 4 hours of ethics training, annually, that addresses ethics laws, public records laws, and public meetings laws. CEO 13-15; CEO 13-24. The training requirement of F.S. 112.3142 was extended to elected municipal officers; and Constitutional officers and municipal officers must certify on their financial disclosure forms that they have completed the required training. Chapter 2014-183, L.O.F. Elected members of Community Development District boards and elected members of other special district boards are not "elected municipal officers" subject to the annual ethics training requirement. CEO 14-29. The training is not required for outgoing officers. CEO 15-5. Beginning in 2016, Public Service Commission members must annually complete 4 hours of such training; F.S. 350.041(3).
II. ANTI-NEPOTISM PROHIBITION

A. The anti-nepotism law (F.S. 112.3135) prohibits a public official from appointing, employing, promoting, or advancing, or advocating the appointment, employment, promotion, or advancement of a relative. It does not prohibit two relatives from being employed within the same agency. CEO 90-62, CEO 93-1, CEO 94-26. The law addresses placement in "a position in [an] agency," and thus has been found not to address situations in which a relative is hired as an independent contractor. CEO 96-13. Of course, a private law firm is not a public "agency" within the meaning of the law. CEO 11-04.

B. At the State level, the law applies to all agencies (executive, legislative, and judicial), except for "an institution under the jurisdiction of the Board of Governors of the State University System." At the local level, the law applies to counties, cities, and "any other political subdivision," except for school and community college districts. F.S. 112.3135(1)(a), (AGO 72-72, AGO 82-48). CEO 14-08 found state colleges to be the same as community colleges for purposes of exemption from the law. However, the Florida K-20 Education Code prohibits a district school board member from employing or appointing a "relative" (as defined in F.S. 112.3135) to work under the direct supervision of the member. F.S. 1012.23(2). A city charter school authority (as opposed to its sponsoring school district) is subject to F.S. 112.3135. CEO 06-13. And, see F.S. 1002.33(24), as amended by chapter 2009-214, L.O.F., making certain charter school officers or personnel subject to F.S. 112.3135 or to similar restrictions. The law applies to appointments made by a community redevelopment agency (CRA) and by a city commission to the city's enterprise zone development agency. CEO 96-5, aff'd by PCA sub nom. City of Gainesville v. State Commission on Ethics, 683 So. 2d 487 (Fla. 1st DCA 1996).

C. The definition of "relative" for purposes of the anti-nepotism law is broader than the term as used in the voting conflicts law, but narrower than the term as it applies in the context of the gift law. Compare F.S. 112.312(21), 112.3135(1)(d), and 112.3143(1)(c). The Commission has found that one's mother's sister's husband is not one's "uncle" under the anti-nepotism law (CEO 99-5), that a person is not one's "sister-in-law" by virtue of marriage to one's wife's brother (CEO 96-6), that one's paramour is not one's "relative" (CEO 02-3), and that the daughter of one's former spouse is not one's "stepdaughter" (CEO 14-09).

D. The anti-nepotism law does not apply to actions other than appointment, employment, promotion, advancement, or advocacy of the same. Supervising or assigning work to a relative is not addressed or prohibited in the law. CEO 90-62, CEO 00-17. An advancement or promotion is "only an increase in grade which elevates an employee to a higher rank or position of greater personal dignity or importance . . . ." [Slaughter v. City of Jacksonville, 338 So. 2d 902 (Fla. 1st DCA 1976)]; however, see CEO 94-30 (in which the Commission found that designation of the position of chief deputy property appraiser for inclusion into the Florida Retirement System's Senior Management Service Class was an advancement or promotion) and compare CEO 94-26 (in which the Commission found that a special pay increase for a brother of the Secretary of the Department of Community Affairs was not a promotion or advancement); see also CEO 94-39 (action labeled "lateral transfer" substantively a promotion or advancement) and CEO 98-23 (county's brother-in-law's promotion to deputy first class not a "promotion" or "advancement" under the law). See CEO 13-7 as to elevation of planning and zoning board members being promotions or advancements. Also, when a seemingly prohibited relationship develops after lawful employment (such as via marriage of a public official and an existing employee of the same agency), discharge of the employee is not required, as there is a "grandfathering"; but the employee cannot be advanced or promoted. CEO 94-6, CEO 91-27. However, "rehires" are not
grandfathered. CEO 92-10 (county commission hiring relative of commissioner as correctional officer when commission takes over jail operations from sheriff who formerly employed the relative); CEO 09-15 (reappointments).

E. Under the former law, when an appointment was made by a board or commission, a relative of one of the board members could be appointed so long as the board member did not participate in the decision or advocate the appointment. City of Miami Beach v. Galbut, 626 So. 2d 192 (Fla. 1993).

F. However, an amendment to the statute after Galbut specifies that a relative of a board member cannot be appointed by the board, regardless of whether the related board member does not participate. CEO 09-15. An exception is made in municipalities of less than 35,000 population for appointments to boards not having land-planning or zoning responsibilities. This exception applies regardless of whether the related public official voted on the appointment and regardless of whether the appointment was made before the exception was adopted. Kinzer v. Commission on Ethics, 654 So. 2d 1007 (3d DCA 1995). See CEO 98-22 regarding the meaning of "land-planning or zoning responsibilities."

G. The receipt of delegated authority to hire, promote, or advance will bring one under the statute in regard to his or her relatives; but one vested with hiring/promotion/advancement authority cannot avoid the statute by attempted delegation of the authority. Morris v. Seeley, 541 So. 2d 659 (Fla. 1st DCA 1989). Merit promotions/advancements going to the highest-scoring applicant and involving no discretion have been found, in at least one instance, not to be violative of the statute. CEO 98-2 [promotions of wildlife officer sons of GFC (FWC) Commission member]. A county commission is not necessarily the "public official" vested with hiring/promotion/advancement authority in relation to all county positions; see CEO 93-1, in which the Commission found that the law was not violated where a county commissioner's wife was promoted in the county's solid waste department because under the county's charter the county manager held the promotion authority. Also, there is support for the position that the law does not apply in situations where a public official merely has the ability to approve or disapprove (rather than make) the hire or appointment (AGO 83-13, AGO 73-75, AGO 71-158); however, be very careful in such situations not to confuse approval/disapproval with attempted delegation of the authority to hire or appoint.

H. The law applies to paid and unpaid positions (CEO 95-12, CEO 13-1) and to reappointments (CEO 95-12, CEO 09-15).

I. Certain volunteer emergency medical, volunteer firefighting, and volunteer police services positions are exempted from the law. CEO 13-1.

J. Agencies may authorize by regulation temporary employment in the event of an emergency as defined in F.S. 252.34.

III. DOING BUSINESS WITH ONE'S AGENCY PROHIBITION; BLIND TRUSTS

A. F.S. 112.313(3) contains two prohibitions, the first of which prohibits a public officer acting in an official capacity, or public employee acting in an official capacity as a purchasing agent (CEO 09-3), from directly or indirectly purchasing, renting, or leasing realty, goods, or services (but, maybe, not intangible personal property, CEO 86-26) for the person's own agency from a business entity of which the person or the person's spouse or child (or any combination of them) is an officer, partner, director, proprietor, or the owner of a "material interest." CEO 17-10 found that a stepson is not a "child" within the meaning of F.S. 112.313(3).
Note that certain "private" charter school governing board members and certain "privatized" chief administrative officers of political subdivisions are now subject to the statute. F.S. 1002.33(26) and F.S. 112.3136. However, neither the first nor the second prohibition of F.S. 112.313(3) prohibits a public officer's or public employee's purchase of realty, goods, or services from his or her political subdivision or an agency thereof [CEO 01-16, CEO 04-5, CEO 07-11 (note 8), CEO 10-24 (note 6)]; nevertheless, such a purchase may be violative of F.S. 112.313(7). Also, note that a director or officer can come within the prohibition whether or not he or she is paid or compensated (CEO 97-9, Note 8, CEO 06-26, CEO 10-2); that nonprofit corporations are "business entities" (CEO 94-17); but that public "agencies" (e.g., state universities, state colleges, school districts) are not "business entities" (CEO 06-2, CEO 15-8).

1. "Purchasing agent" is defined in F.S. 112.312(20).
2. "Business entity" is defined in F.S. 112.312(5); and, under appropriate circumstances, may or may not include an individual natural person in their personal capacity. CEO 10-4.
3. "Material interest" is defined in F.S. 112.312(15) to mean the direct or indirect ownership of more than 5% of the total assets or capital stock of a business entity.
4. "Indirectly" doing business does not include situations where the officer's or employee's corporation does business with a business entity that is selling to his or her agency. CEO 78-83, CEO 88-43, CEO 07-2, CEO 08-8 (Question 2). See also CEO 00-21 regarding a county manager's sale of land to an entity that in turn donates the land to the county; however, this opinion is of little precedent value in that it is expressly limited to its peculiar facts.
5. A public officer "acts in his or her official capacity" for purposes of the first prohibition when a board of which he or she is a member (e.g., a county commission) acts collegially to purchase, rent, or lease, regardless of whether the public officer abstains from voting on the matter. CEO 90-24, CEO 10-4. It has been found that a city commissioner does not act to purchase when the city physician, rather than the city commission, acts to purchase. CEO 82-24. The first prohibition is not violated where the purchase, rental, or leasing by the public agency occurs before the public officer of the public agency became connected privately to the business entity. CEO 07-1.

6. See Chapter 2016-263, Section 18, L.O.F., regarding the City of Webster.

B. The second prohibition in F.S. 112.313(3) is against a public officer or employee acting in a private capacity to rent, lease, or sell any realty, goods, or services to the person's agency, or to the political subdivision served by the person, or any agency of the political subdivision. CEO 15-02 found that public school teachers could not sell items to their school, their school district, or any school within their school district, absent applicability of an exemption. Note that an "agency of a political subdivision" has been found to include agencies of a county headed by Constitutional officers elected separately from the county commission (e.g., sheriff, clerk of court, supervisor of elections, tax collector, property appraiser). CEO 12-13.

1. "Acting in a private capacity" includes situations where one personally is involved with the sale to the agency or political subdivision (CEO 81-50, CEO 94-3, CEO 12-13), as well as where one is an officer, director, or owner of more than a 5% interest in a business that is selling to the agency or political subdivision. CEO 81-2; CEO 09-1. The statute does not apply to a situation where one merely is an employee of a business entity and personally is uninvolved with the sale (CEO 94-3); however, see F.S. 112.313(7) below. One does not act in a private capacity where he or she was a member of the public agency, but held no connection to the business entity, at the time of the rental, lease, or sale to the public agency. CEO 07-1. One does not act in
a private capacity to rent, lease, or sell to his political subdivision or an agency thereof where his or her company subcontracts with another company that in turn is renting, leasing, or selling to his political subdivision or agency thereof. CEO 07-2, CEO 08-8 (Question 2). "Selling" requires a sale (CEO 08-14). But a "sale" or "selling" has not been limited to cash sales for an express service; rather, a sale can be present in broader situations involving a valuable consideration (CEO 11-9). CEO 15-6 found that a police officer was not selling services to his city where the city received services but a third party, and not the city, paid.

2. The statute applies to prevent an agency employee from being a partner in a law firm which is providing services to the agency. Howard v. Commission on Ethics, 421 So. 2d 37 (Fla. 3d DCA 1982); CEO 08-15. However, one's public employee duties can be increased for extra pay without violating the statute. CEO 08-15, Question 2. [And see "local government attorneys" below.]

3. A public officer's or public employee's selling to his agency includes situations where his or her business entity provides services to a clientele that the agency itself would be legally obligated (not just voluntarily choosing) to serve but for the proxy actions of the entity paid for or supported by the agency. CEO 07-11 (note 9), CEO 82-22, CEO 82-9, CEO 15-14. But was found not to apply in a situation where a school board member's company sold uniforms to parents of school children, not to the school district or the district's schools. CEO 10-12. See CEO 15-14 regarding a county employee acting as a private landlord contracting with the county to provide housing to H.U.D. Section 8 tenants.

C. Donations to one's agency have been found not to fall within the scope of this prohibition. CEO 82-15; CEO 13-13. CEO 17-12 dealt with a donation by a company connected to a member of the Board of Governors of the State University System (BOG). Neither does a real estate sale involving a public official as a real estate professional without a commission (CEO 82-50), the bringing of a lawsuit (CEO 77-14), nor the condemnation of an official's land by the official's agency (CEO 78-8). Note that the statute does not address purchases from one's agency or political subdivision; but also note the possible applicability of F.S. 112.313(7). CEO 82-50, CEO 01-16, CEO 07-11 (note 8).

D. Exceptions to the prohibition:
   1. F.S. 112.313(3) expressly "grandfathers" in certain existing contracts, including those entered into prior to qualification for elective office, appointment to public office, or beginning public employment. CEO 96-30; CEO 09-1. However, changes in contracts after a person assumes a public position are deemed to be new contracts not subject to this exemption (CEO 85-40 and CEO 84-43), unless the renewals are completely nondiscretionary (CEO 82-10) or unless the original agreement expressly provides for renewal for a specified period and the provisions of the contract under the renewal are the same as the provisions of the original agreement (CEO 85-40). Also, see CEO 02-14, CEO 07-1, CEO 08-8 (Question 1), and CEO 09-1. Further, the Commission has used F.S. 112.316 to grandfather contracts entered into between qualification for elective office and assumption of office (CEO 95-13); and has used F.S. 112.316 to negate the prohibition in situations involving a "unity of interest" (CEO 06-26, county tax collectors acquiring integrated tax management system). See CEO 11-17 regarding a hospital district board commissioner and grandfathering. CEO 14-16 grandfathered a contract predating the employment of physicians at a hospital district.

   2. Other express exemptions are contained in F.S. 112.313(12), as follows:
      a. Advisory board members may receive a waiver in a particular instance by the appointing authority, made in a public meeting after a written disclosure is made
on Commission Form 4A. CEO 16-2. CEO 16-4 found the "appointing authority" of a particular county advisory board member to be the county commission. Note that advisory status requires a detailed examination of the attributes of the governmental body, and is not controlled by any perceived insignificance of the body (CEO 96-19, county fine arts council not advisory); note that it has been found that the whole of the body's attributes and operations must be advisory, note merely some of its nature (CEO 10-24); and note that for purposes of the exemption in F.S. 112.313(12), but not for purposes of financial disclosure under F.S. 112.3145, that an advisory board need only be "solely advisory," irrespective of the amount of its budget or authorized expenditures (CEO 77-178). See also CEO 06-24, in which a county transportation service board was found not to be an advisory board.

b. At the local government level, when the business is to be transacted by rotation among all qualified suppliers, the official's business may be placed on the rotation list. "Qualified" means that reasonable, but not unduly restrictive, conditions may be placed on the suppliers by the purchasing agency, such as the ability to supply merchandise of acceptable quality or specifications. F.S. 112.313(12)(a). CEO 89-64 and CEO 92-27. The use of selection criteria that include the volume of current and prior work done with a firm does not constitute a "rotation system." CEO 96-23. See CEO 01-15 and CEO 11-9, regarding providers from outside of the political subdivision being included in the rotation.

c. When the business is to be transacted through a sealed, competitive bidding process, the official's business may submit a bid and be awarded the contract. F.S. 112.313(12)(b). However, the official must file a written disclosure prior to or at the time the bid is submitted (Commission Form 3A), and must not participate in the process. In CEO 10-5, the Commission found that a water management district governing board member's earlier general involvement regarding a district real property did not equate to "participation in the determination of the bid specifications" regarding a subsequent lease of the property. And see CEO 07-23, applying F.S. 112.316 to negate a conflict in a "piggy-back" contract situation not technically in compliance with the exemption. Contracts awarded under the Consultants' Competitive Negotiation Act (F.S. 287.055) do not constitute a sealed bidding process. CEO 81-28 and CEO 01-15. Nor do RFPs (CEO 89-48). However, while the exemption will insulate one from conflicts based upon the business between the official's public agency and the provider of goods, services, or realty to the public agency, it will not exempt conflicts arising independent of the competitively bid business. CEO 96-7. However, note that F.S. 1001.42(12)(i), a provision of law outside of the Code of Ethics and not administered by the Commission on Ethics (a provision of the Florida K-20 Education Code), prohibits school board members and school superintendents from having certain interests regarding contracts for materials, supplies, or services. AGO 06-50.

d. Legal advertising in a newspaper, utilities service, and passage on a common carrier are exempted. F.S. 112.313(12)(c). Legal advertising means only that advertising required by law. CEO 90-57. Utilities service includes telephone service (CEO 83-7), but does not include bulk fuel oil (CEO 95-8) or utility location services (CEO 11-12, note 7). The exemption for passage on a common carrier applies to purchase of tickets by the agency directly from the carrier, but does not apply to purchases from a travel agency (CEO 80-1).

e. Emergency purchases are exempted, but only when made "in order to protect the health, safety, or welfare" of the citizens. F.S. 112.313(12)(d).

f. When the official's business is the only source of supply within the political subdivision, an exemption is provided, as long as disclosure is made prior to the transaction, on Commission Form 4A. F.S. 112.313(12)(e). A television station has been found,
in a certain context, to be a sole source of supply. CEO 00-10. Real property owned by a corporation in which an assistant principal has a one-third interest has been found, in a certain context, to be a sole source of supply of real property for construction of new schools. CEO 06-28. The purchase of parcels for road right-of-way can be a series of sole source purchases. CEO 91-31. In CEO 09-18, the exemption was found to be inapplicable to a relationship between a city and a developer, where the relationship involved interests of the developer beyond its provision of sole source items to the city. In CEO 10-4, realty adjacent to a county park was found to be a sole source item. CEO 11-02 found a landowner employing a water management district governing board member to be a sole source of a water project agreement. CEO 10-17 found a corporation employing a reserve deputy sheriff to be the only source of supply for computer applications that enable information sharing between police agencies. CEO 16-7 addressed growth modeling as a sole source item. CEO 16-8 addressed the sole source exemption in the context of a county commissioner being employed by a company providing vehicle parts to the county. As with the rotation exemption, the sole source exemption is not available to State-level agencies.

g. Transactions not exceeding $500 in the aggregate in a calendar year may be made between the agency and the official's business. F.S. 112.313(12)(f).

h. A municipal, county, or district public official may be a stockholder, officer, or director of a bank acting as a depository of the agency's funds, provided that the governing body of the agency (e.g., city commission, county commission, school board, water management district board) has determined that the official has not favored that bank over other qualified banks. F.S. 112.313(12)(g), CEO 83-48, and CEO 83-81. Note that this applies only when the bank will be acting as a depository; other banking functions, such as loans, are not encompassed by the exemption.

i. The transaction is made pursuant to F.S. 1004.22 or F.S. 1004.23 and is specifically approved by the president and the chair of the university board of trustees. F.S. 112.313(12)(h).

3. When the public officer or employee has and had no influence or public responsibility in relation to the business between the agency and the private business entity with which the officer or employee is connected, the Commission has viewed F.S. 112.316 as negating the literal language of the prohibition in F.S. 112.313(3). CEO 76-38. As a result, members of subordinate boards of a city or county would not, in certain circumstances, be prohibited from doing business with the city or county, so long as their board had nothing to do with the transaction [see, for example, CEO 81-66, CEO 88-17, and In re Stephen Huie, 13 FA LR 1852 (Comm. on Ethics 10/26/89)] and so long as no other conflicting factors existed (see CEO 05-14, member of personnel board leasing space to county where member might be tempted to favor county in issues before the board). Also, via F.S. 112.316, a county commissioner is not prohibited from serving as a county-funded indigent defense counsel specially appointed by the court (under a scheme set prior to his becoming a commissioner), although the statute would not legitimize the commissioner's contracting with the county as a special contract public defender (CEO 02-6). Further, see CEO 94-19 (city police officers receiving rent reduction in exchange for providing security services), CEO 09-3 (city fire department personnel taking courses from fire lieutenant's company), and CEO 10-23 (city tennis professional employee also operating pro shop). See CEO 11-23, finding no prohibited conflict for public district school board members, the district superintendent, and district employees occasioned by their uncompensated service as board members of charter schools, where the district school board applied to itself for the charter school. See CEO 14-24, regarding application of F.S. 112.316 to negate conflict where a certain county
employee contracted with the county to be an independent contractor for the county after her retirement. CEO 14-11 and CEO 14-12 found a "unity of interest" to negate conflict under F.S. 112.313(3), via application of F.S. 112.316, regarding uncompensated service for a county economic development council (EDC) receiving funding from the county. CEO 14-15 applied F.S. 112.316 to negate conflict where certain city police department employees provided equestrian services to the city.

E. F.S. 112.31425 (new, via Chapter 2013-36, L.O.F.) provides that if a public officer holds a beneficial interest in a qualified blind trust as described in the statute, he or she does not have a conflict of interest prohibited under F.S. 112.313(3) or (7) or a voting conflict of interest under F.S. 112.3143 with regard to matters pertaining to that interest. Essentially, the trust must be set up in a certain manner, including making documentation, disclosures, and filings, and the public officer must act in accord with the statute in relation to the trust and the trustee, in order to receive the conflict of interest and voting conflict protections. CEO 13-14.

F. F.S. 1002.84(20) is an additional provision relating to contracts involving members, members' relatives, and employees of early learning coalitions.

IV. CONFLICTING EMPLOYMENT AND CONTRACTUAL RELATIONSHIPS

A. F.S. 112.313(7) prohibits a public officer or employee (but not a mere candidate for office, CEO 09-20, and not a relative of the public officer or employee, CEO 11-04) from having a contractual relationship or employment with an agency or a business entity that is either subject to the regulation of, or doing business with, the officer's or employee's agency. Note, as regarding F.S. 112.313(3), applicability of the statute to "private" charter school board members and to "privatized" chief administrative officers of political subdivisions. F.S. 1002.33(26), F.S. 112.3136.

1. "Employment" requires that one be compensated, or receive some consideration. CEO 76-21; CEO 80-29. "Employment" is not limited to a master/servant relationship, but also includes being an owner, partner, sole proprietor of a business, or self-employed person (CEO 84-95, CEO 16-12), includes compensated directors of nonprofit entities (CEO 85-89), and can include a real estate sales associate "hanging" his license with a broker (CEO 12-15). Refusal, in advance and in writing, of compensation has been held to negate the required element of compensation (CEO 00-23; CEO 08-22).

2. Whether a "contractual relationship" exists has been governed by the substantive law of contract.

a. It has not been limited to contracting parties, but has been found to include third party beneficiaries. CEO 76-85.

b. Sales of goods or realty, the provision of services for compensation, the ownership of shares of stock (CEO 99-13, CEO 11-05), the holding of stock options (CEO 05-18, note 8), and the "hanging" of a real estate sales associate's license (CEO 12-15) have been found to constitute contractual relationships.

c. Members (partners, shareholders, associates), but not "of counsel attorneys," of law firms have contractual relationships with each client of the firm regardless of whether a particular attorney performs or supervises work for a particular client (CEO 80-79, CEO 94-5, CEO 96-1, CEO 03-7, CEO 04-9, CEO 10-20, CEO 10-24, CEO 16-9); but accountants have not been found to have similar "firm-based" contractual relationships (CEO 11-15). Proprietors of unincorporated insurance agencies have been found to hold contractual relationships with each
d. Uncompensated service has been found not to constitute a contractual relationship (CEO 06-26), even if travel and lodging expenses are received (CEO 93-23); but see the Order Finding Probable Cause in In re TRIEU NGUYEN, Commission on Ethics Complaint No. 15-011, under a specific factual situation involving reimbursement for travel expenses. However, lack of compensation is not controlling if consideration or substitutes for consideration are present, or if services under professional licensure (e.g., insurance agent licensure, real estate broker licensure, engineer licensure, landscape architect licensure) are involved (CEO 95-28, CEO 08-7, CEO 08-8, CEO 11-6). And note that a president of a voluntary association can have a conflicting contractual relationship (CEO 06-12), as can an officer or director of a voluntary association (CEO 08-7, Question 2); however, mere membership in the association or service on one of its committees likely would not support the existence of a conflicting contractual relationship. CEO 08-7; CEO 08-22. An uncompensated director of a nonprofit corporation, who is not a member (analogous to a shareholder) of the corporation, was not found to hold a contractual relationship with the corporation (CEO 10-2, CEO 14-12). See CEO 13-26 regarding a State university medical school department chair also involved with a private, nonprofit research foundation. And see CEO 09-7 (county commissioner serving on economic development council). A member of a limited liability company (LLC) has a contractual relationship with the company. CEO 08-7; CEO 12-2. Less than full-time work has been found to constitute a contractual relationship. CEO 12-9. Marriage does not constitute a contractual relationship between the husband and wife. CEO 90-77. The statute has been found to address contractual relationships of the public officer or employee, not those of his or her spouse (CEO 12-2, CEO 15-11) or child (CEO 14-11).

e. The holding of an office (e.g., a county/city commission seat, school board seat, state college trustee) has been found not to be employment or a contractual relationship, even if it is a compensated position. CEO 92-39; CEO 15-8. And the mere holding of a government-issued (DBPR) license was found not to constitute employment or a contractual relationship. CEO 15-4.

f. One does not hold a contractual relationship with a company merely because one's corporation or company holds a contractual relationship with the company. CEO 08-23; CEO 14-27. However, CEO 14-02 found that the statute applied to prohibit a city commissioner's private performance of talk show services for a radio station doing business with the city, finding that the station sought the personal services of the commissioner and paid him through his firm; nevertheless, the opinion went on to find that the firm's provision of consulting services to the station, without the station seeking the commissioner's personal services and without his agreeing to perform personal services, was not prohibited. CEO 14-14 found that a city councilperson's employment with a bank did not mean that he also held employment with a company (which was doing business with the city) owned by a member of the bank's board of directors.

3. Past or possible future contractual relationships have been found not to violate the statute; the contractual relationship or employment must exist simultaneously with the other elements of the statute. CEO 88-11; CEO 08-14; CEO 12-3.

4. A "business entity" is defined in F.S. 112.312(5). A private university is a business entity (CEO 99-11), as is a nonprofit youth center (CEO 78-18) and a
foundation/nonprofit corporation/tax-exempt organization (CEO 07-11). Different companies have been found to be separate business entities even when one company has an interest in or owns shares in the other company (CEO 11-13, regarding a healthcare executive/state university trustee/teaching hospital). CEO 13-5. Further, parent and subsidiary corporations have been found to be separate business entities (CEO 86-12, CEO 05-8), except for situations involving holding companies or subsidiaries where the parent owns only the asset of the subsidiary (CEO 94-5, CEO 99-13, CEO 03-1, CEO 09-2, CEO 11-05). Even an individual, such as a self-employed person privately providing tutoring services, can be a “business entity” (CEO 04-17, CEO 11-14); however, natural persons who merely own personal or real property are not necessarily “business entities” (CEO 92-2; CEO 82-88; CEO 07-18, note 4; CEO 08-12).

5. “Agency” is defined in F.S. 112.312(2). The definition does not necessarily include the entire department or political subdivision of the officer or employee, but rather refers to the lowest departmental unit within which a public officer's or employee's influence might reasonably be considered to extend. CEO 93-31 and CEO 99-7. Determining the agency of the officer or employee can be critical to an analysis of how the statute applies. For example, the agency of some appointed board members has been found to be that board (CEO 90-7), while the agency of other board members, particularly boards with only ad hoc advisory authority, may be the unit of government they are advising, as well as their particular board (CEO 94-36, CEO 99-2, CEO 99-11, CEO 16-2, CEO 16-9). A city planning board is a separate agency from the city commission (CEO 01-16; CEO 11-6). A city's downtown development review board was not found to be a separate agency from its economic development commission (CEO 10-24). However, a city manager's agency was found to be much more of city government than the city manager's office (CEO 96-15). The agency of a county personnel board member is the board (CEO 05-14). The agency of a county transportation service board member has been found to be the board (CEO 06-24). The agency of a county board of adjustment member was found to be the board (CEO 88-17). A school board member's agency does not include the county value adjustment board where he or she is not one of the two school board appointees to the board and where the remaining members of the school board could be asked to substitute for the named appointees but seldom have (CEO 02-5). A public school teacher’s or principal’s agency is his or her school, not the whole of the school district (CEO 04-17, CEO 10-15, CEO 16-12). The agency of an employee of the operations department of a school district's central office was found to be the operations department (CEO 14-28). A school board member's agency has been found to be the entire school district (CEO 14-21; CEO 14-27). In CEO 08-1, the agency of a city councilman for purposes of F.S. 112.313(7) was determined to be the city council, and in CEO 12-13 the agency of a county commissioner was determined to be the county commission; but note that F.S. 112.313(3), see above, can apply regarding the whole of an officer's or employee's political subdivision. CEO 15-6 found the agency of a police officer to be the city police department, not the city commission. The whole of a water management district has been found to be the agency of a water management district engineer (CEO 96-3). At the State level, one's agency may only be one's bureau (CEO 92-48, CEO 15-4) or one's district (CEO 87-20, CEO 01-7), and not the whole of an executive department. But note that the agency of an employee of the State Agency for Persons with Disabilities (APD) is the entire APD. CEO 05-6, CEO 05-7. The agency of a member of the Florida Statewide Passenger Rail Commission has been found to be the Commission rather than FDOT. CEO 10-20. The agency of an employee of a county health department has been found to be the employee's health department and not health departments within other counties. CEO 98-20, CEO 90-65. CEO 14-05 found the agency of the general
counsel of the Office of Financial Regulation (OFR) to be OFR. CEO 14-06 found the agency of the general counsel of the Department of Business and Professional Regulation (DBPR) to be DBPR. CEO 15-14 found the agency of a certain county employee to be the administrative division of the county's community services department.

6. A business entity is "subject to the regulation of" an agency when the business' operations or modes of doing business are subject to the control or authority of the agency. CEO 74-8. In CEO 09-18, a corporation which had entered into a development agreement with a city was found to be "subject to the regulation of" the city council, due to the many terms and conditions contained in the agreement. Occupational licensing for revenue purposes is not "regulation." CEO 79-82. Incidental or passive governmental influence, such as the enactment of ordinances that affect a broad number of people, does not constitute "regulation." CEO 78-59. County phosphate mining ordinances have been held not to constitute "regulation" by county commissions of mining companies. CEO 00-14. In some situations, a city council or a county commission may not regulate a developer, even though the city's board of adjustment and building department may. CEO 08-1, CEO 08-7. However, in CEO 11-6, the Commission found that activities of a city planning and zoning board did not constitute "regulation"; and see CEO 11-16. The enforcement of laws of general applicability does not constitute "regulation." CEO 91-22, CEO 04-14. However, an agency may be subject to the regulation of another agency, as in CEO 97-03, where the State Board of Community Colleges was found to regulate community colleges. A city building and planning department regulates licensed contractors doing business in the city (CEO 96-15), but a city commission usually does not (CEO 99-7). A city manager's ministerial (nondiscretionary) function to sign a subdivision plat has been found not to constitute regulation of a developer (CEO 76-205, Question 2). Annexation constitutes neither "regulation" nor "doing business." CEO 03-7. A waiver of taxes or granting of a similar economic incentive by a city's economic development commission was found not to constitute regulation or the doing of business, but café permitting or similar functions by its downtown development review board were found to constitute regulation (CEO 10-24). A port authority regulates a shipping company operating at the port (CEO 03-17), the interests of a shipping agent (CEO 08-5), and a company moving cargo through port terminals (CEO 13-11). A county manatee rule review committee (an ad hoc advisory body) does not exercise regulatory authority (CEO 04-14). A city housing authority does not regulate a state university where the two cooperate to carry out tutoring of at-risk children under a federal program (CEO 06-2). CEO 97-7 found that a charter school is subject to the regulation of its sponsoring school district; but, in a particular context, CEO 09-23 used F.S. 112.316 and "the spirit of" F.S. 112.313(15) to negate a conflict of a school board member employed as an adjunct faculty member at a State college operating a charter school approved by the school board. A franchise has been found to be "regulation," in addition to constituting "doing business" (CEO 12-9). The Florida Virtual School was found not to be subject to the regulation of a local school district. CEO 13-22. In CEO 12-21, a county was not found to regulate a municipality. Note that possible future regulation is not "regulation" under the statute; one's contractual relationship must occur at the same time as the regulatory relationship (CEO 90-65).

7. A business entity is "doing business with" an agency where the parties have entered into a lease, contract, or other type of arrangement where one party would have a cause of action against the other in the event of a breach or default. CEO 86-24, CEO 07-11, CEO 11-14, CEO 11-15, CEO 12-15. In contrast, CEO 15-01 found that a city's donation without obligation of in-kind services to a chamber of commerce did not constitute "doing business"; see also CEO 17-12 (donation/member of Board of Governors of State University System). CEO 17-15
concerned a donation (not a prohibited conflict) of property by a city to a charter school for which a city commissioner served as an attorney, or, in the alternative, a sale (prohibited conflict) of the property. CEO 14-04 found that a business entity seeking a contract would not be "doing business" with an agency until the agency awarded the contract to the company. Note that the public officer or public employee personally does not have to be involved on the private side of the business between his private employer and his public agency in order for the "doing business" element to be present. CEO 10-7. A public officer or employee does not hold employment or a contractual relationship with a company that is doing business with his or her public agency merely because a company of which he or she is an owner or officer subcontracts with the other company (CEO 88-43, CEO 07-2, CEO 11-12, CEO 11-18, CEO 12-8); however, see CEO 14-02, regarding a city commissioner whose personal services for a radio station were sought "through his firm." The company of a school board member was not found to be doing business with the school district when it sold uniforms to parents of school students but not to the district or the district's schools, provided no solicitation or pressuring of school personnel occurred. CEO 10-12. The Commission has found that a direct support organization is doing business with the agency (e.g., college, university) which created it (CEO 89-36, CEO 11-15). A lawsuit between a business entity and an agency does not constitute "doing business" (CEO 77-14); nor does the mere donation of property to an agency (CEO 82-13) or from an agency (CEO 04-5, Question 3, and CEO 04-6). Agreements between governmental entities for the provision of services generally do not constitute "doing business" [CEO 76-2, CEO 81-5, CEO 04-9, Question 3, CEO 06-2, CEO 12-21, (CEO 13-22, agreement between county school district and Florida Virtual School)], but the extension of a grant from one agency to another may (CEO 77-65). In CEO 08-6, it was determined that a sheriff's office's contracting with a city to provide municipal law enforcement services did not constitute "doing business," where a city commissioner's employment with the sheriff's office was not connected to the sheriff's provision of services to the city. The existence of a warranty on a sheriff's mobile command post constitutes "doing business" (CEO 06-25), as does the relationship between a charter school and its sponsoring school district (CEO 97-7). A city was found to be "doing business" with a corporation by their entry into a development agreement with one another (CEO 09-18). A franchise has been found to constitute "doing business" (CEO 12-9). Receiving funds from a CRA through its commercial loan subsidy program has been found to constitute "doing business," and thus conflicting for CRA board members. CEO 12-7. Further, in CEO 12-7, the Commission found that the special voting conflict language applicable to CRAs for purposes of F.S. 112.3143 did not operate as an exemption to a conflict under F.S. 112.313(7). However, see CEO 12-14 regarding redevelopment area board members, as opposed to CRA members.

8. Examples of conflicts under this prohibition include the following: city commissioner prohibited from being employed by brokerage firm if firm is selected as underwriter for one or more city bond issues (CEO 85-29); county commissioner prohibited from employment with national brokerage firm contracting with county for underwriting services for proposed bond issue (CEO 88-80); city commissioner employed by two city franchisees [Gordon v. Commission on Ethics, 609 So. 2d 125 (Fla. 4th DCA 1992)]; and health facilities authority's employee's law firm providing services to authority (CEO 08-15, Question 1).

9. See Chapter 2016-263, Section 18, L.O.F., regarding the City of Webster.

B. F.S. 112.313(7) also prohibits a public officer or employee from having a contractual relationship or employment that will create a "continuing or frequently recurring" conflict of interest, or that would "impede the full and faithful discharge" of public duties.
1. The statute is grounded in the principle that one cannot serve two masters. It does not require proof that the public officer or employee has failed to perform his responsibilities or has acted corruptly; the statute is entirely preventative in nature, intended to prevent situations in which private considerations may override the faithful discharge of public responsibilities. It is concerned with what might happen, with the temptation to dishonor. See Zerweck v. Commission on Ethics, 409 So. 2d 57 (Fla. 4th DCA 1982), finding the statute not unconstitutionally vague.

2. An impediment to public duty can be based on a single incident or transaction. For example, the Commission has concluded that representing a client before the board of which one is a member interferes with the full and faithful discharge of one's public duties and, where such representations are frequent, presents a continuing or frequently recurring conflict. CEO 77-126, CEO 78-86. The same conflict would exist when another member or employee of the public officer's professional firm undertakes to represent a client before the officer's board (CEO 88-40, CEO 11-6, CEO 15-3), or where a member or employee of a law firm of which the public officer is "of counsel" seeks to represent a client before the officer's board [CEO 96-1, aff'd by PCA sub nom. Korman v. State Commission on Ethics, 710 So. 2d 553 (Fla. 1st DCA 1996)]. Also, an appearance by one's firm before one's public board, not for a client but for one's own firm's development plans, has been found to be conflicting (CEO 11-6). And note that such a conflict has been recognized to exist if the public officer's firm represents the client in the matter, regardless of whether the firm's work includes an appearance before the public officer's assembled board or the work stops short of such an appearance. CEO 10-24; CEO 11-6. And see CEO 09-10. But see CEO 07-13 regarding other members of a city commissioner's law firm representing clients before city boards other than the city commission. See CEO 12-21 regarding a county commissioner's law firm serving as special counsel to a municipality located within the county. CEO 17-04 concerned a member of the City of Jacksonville's Ethics Commission being a member of a law firm representing a client in litigation involving the City and independent agencies of the City. However, commentary in a private capacity to one's own public board regarding delivery of a product has been distinguished from prohibited representation of a client before one's public board. CEO 07-2, CEO 08-8 (note 6). Also, even though a conflict of interest would be created were a State Senator to personally represent a client before the Legislature, a conflict would not be created were another attorney of a law firm with which the Senator has an "of counsel" relationship to represent a client before the Legislature, provided certain conditions are adhered to. CEO 03-3. See CEO 05-10 regarding the law firm of a member of the Florida Building Commission Technical Advisory Committee representing clients regarding the Commission, the Committee, or the Accessibility Advisory Council [however, the result of this opinion may be affected by F.S. 553.74(5)].

3. This prohibition can interface with other aspects of the Code, such as F.S. 112.313(8), regarding the temptation to disclose or use information not available to the general public and gained by reason of one's official position (CEO 92-18, deputy clerks of court developing software for sale to other clerks' offices having access to proprietary information via their public positions; CEO 11-14, district school board employee privately marketing computer workbook tool).

4. The statute would prohibit a county commission candidate from entering into a binding contract containing campaign promises and a penalty clause with a political action committee. CEO 96-24 and CEO 96-25. However, statute does not prohibit a State Senator's filing and supporting general and special legislation of interest to his private law client, where
Senator is not compensated in any way by the client for his efforts as a member of the Legislature. CEO 03-11. But the statute would prohibit a State Representative from serving as president of the Florida Association of Realtors (CEO 06-12) and it would prohibit a State Representative from consulting with a waste management company as its manager of community and municipal relations (CEO 06-19). And see CEO 09-8 regarding a State Representative's working privately to cultivate, for his private employer, clients employing Legislative lobbyists. It would prohibit a county probation officer from being employed by an entity that is providing services to probationers. CEO 96-28. Absent aggravating facts, it would not prohibit Fish and Wildlife Conservation Commission law enforcement officers from providing security services to private landowners. CEO 07-25. It would prohibit a city mayor from contracting to promote charter schools with a subsidiary of a company doing business with the city. CEO 01-9. It would prohibit a district school board member from being employed as an assistant principal at a charter school sponsored by the school board (CEO 06-23); or from being president and owner of a corporation providing career preparation coaching to students of a charter school (CEO 10-10). It would prohibit a public school teacher from privately tutoring for pay his or her own public school students; but it would not, under certain circumstances, prohibit the teacher’s private tutoring of other public school students. CEO 04-17. While the statute would not prohibit a teacher from operating, for a fee, a summer art camp, it would prohibit the teacher's contracting with parents of students who are in the teacher's classes to have their children participate in the camp. CEO 10-15; see, also, CEO 12-23. CEO 13-21 (teacher secondarily employed providing programs to students) found a prohibited conflict if the programs were provided privately, but not if the teacher performed extra school district public employee duties for extra public salary in providing the programs; and CEO 15-02 concerned teachers selling items to students in their classes or to the students' parents. CEO 16-12 addressed a public school teacher's employment as an attorney, including in lawsuits involving the teacher's school board/district and others. And see CEO 09-3 (city fire department personnel taking courses from fire lieutenant's company). Also, it would prohibit a sheriff’s administrative/disciplinary review board member from serving as president of a police union local. CEO 04-13. And, it has been found to prohibit a county commissioner from being employed by the same county's sheriff's office. CEO 12-12. The statute would not prohibit a trustee of a city's pension boards (who personally is not a member of any pension plan/system of the city) from being employed as the city's finance director. CEO 06-16. It would prohibit a member of the Florida Real Estate Commission from being employed as an instructor at a real estate school (CEO 06-9); however, no prohibited conflict was found where a member of a hospital district board, acting in his private capacity as a real estate professional, received a commission regarding the purchase of a home by district personnel, where the member did not solicit the business (CEO 07-18). It would prohibit a DCF contract manager from being employed by a subcontractor of a nonprofit corporation contracting with DCF. CEO 07-9. Under certain conditions, the statute was not found to prohibit a city police officer's privately locating and recovering chattel property for lenders (CEO 08-16); but was found to prohibit a police officer's conducting surveillance in unfaithful spouse cases and employee theft cases (CEO 13-16). It was not found, under certain conditions, to prohibit a school board member's company from selling school uniforms to parents of students (CEO 10-12). CEO 14-21 opined on a school board member's employment with a nonprofit literacy foundation. CEO found a prohibited conflict would be created were a school board member's company to engage teachers from her school district to provide private tutoring, were it to provide services to students of her district, or if it were to provide STEM training using teachers of her district or to students of her district. The
statute can apply when a public employee inspects his own private work or when another employee of his public agency inspects his private work (CEO 87-12, Question 2); but determining the scope of one's "agency" and possible application of F.S. 112.316, Florida Statutes, should be a part of the analysis in a given matter, especially if the other employee is not subordinate in his public capacity to the employee with the private endeavor. See CEO 11-03, regarding a State Representative being engaged as an expert witness by a law firm representing the Department of Financial Services in litigation. In CEO 11-05, under the circumstances presented, the Commission found that a Governor's passive investments in large national corporations and investment funds did not create a prohibited conflict under the statute; and the Commission found that the Governor could place non-conflicting investments in a blind trust without there being a prohibited conflict, even if the trust later invested in a Florida company in which the Governor would be prohibited from directly owning an interest. CEO 12-18 found that a DCF supervisor for the food stamp program would not have a prohibited conflict due to her part-time employment at a gas station/convenience store that accepts food stamps. CEO 12-8 found that a school board budget advisory committee member who consulted, through his LLC, with a charter school company did not, under the particular facts of the opinion, have a prohibited conflict under the second part of F.S. 112.313(7)(a). CEO 14-04 found a conflict would be created under the second part of the statute were a FDOT employee whose former private employer held his pension funds to be involved in the selection process for award of a FDOT contract sought by the former employer. CEO 14-07 found, under particular circumstances, no prohibited conflict where the chief risk officer of Citizens Property Insurance Corporation recommended actuarial services to his former private clients. CEO 15-6 found that a prohibited conflict would be created were a city police officer's business to serve as a receiver for properties encumbered by city code enforcement liens. CEO 15-14 found a prohibited conflict where a county employee served on a committee which determined whether current or prospective tenants of the employee's H.U.D. Section 8 rental business were Section 8 eligible; but did not find a prohibited conflict based on simple, nondiscretionary county employee duties. CEO 16-9 determined that a prohibited conflict would be created were a member of a county human services advisory board to represent a client in a lawsuit against a nonprofit entity whose funding request had to come before the board. CEO 17-05 found that a prohibited conflict would be created were a city commissioner's company to have city vendors advertising on its website.

5. The Commission on Ethics has wide discretion to interpret the statute, and courts must defer to its interpretation unless clearly erroneous. Velez v. Commission on Ethics, 739 So. 2d 686 (Fla. 5th DCA 1999).

6. Issues of use of leave time from one's public position to attend to one's private business endeavor and whether a public employee has adequate time to perform both his public and private jobs have been found not to be governed by the statute. CEO 86-81, CEO 90-65.

C. Exemptions to the Application of 112.313(7):

1. When the agency is a special tax district created for the purpose of financing, constructing, and maintaining improvements in the district, or is a Ch. 298 F.S. water control district, employment or contracts with the business entity developing the property will not be prohibited, per se. However, the district must be created by general or special law, as opposed to local ordinance. CEO 84-4. F.S. 112.313(7)(a)1.

2. When the agency is a legislative body and the regulatory power exercised over the business entity resides in another agency or is exercised strictly through the enactment of
laws or ordinances, employment and contracts with the business entity are not prohibited.  F.S. 112.313(7)(a)2. CEO 91-1. CEO 08-20 (state senator in private equity firm). CEO 09-8 (Florida House member). CEO 09-13 (House member employed by Office of Criminal Conflict and Civil Regional Counsel).

3. When legislative act or local ordinance requires or allows certain public officers or employees to engage in certain occupations or professions in order to be qualified to hold their public positions, then 112.313(7) does not prohibit the officer or employee from practicing in that occupation or profession. F.S. 112.313(7)(b). For example, in CEO 84-63, where a port authority member was required to be a representative of business entities doing business with or at the port, the member's employment as vice president of a shipping company at the port was considered exempted; but see CEO 08-5. In Brevard County v. Commission on Ethics, 678 So. 2d 906 (Fla. 1st DCA 1996), the court affirmed CEO 95-27, an opinion concluding that the county's firefighters would be prohibited from being employed by local ambulance companies and that F.S. 112.313(7)(b) would not allow the County to exempt its firefighters' employment from the prohibition of F.S. 112.313(7)(a). See also CEO 01-10 [F.S. 112.313(7)(b) not applicable to Florida Building Commission member]. Regarding architectural review board members, see CEO 04-1. CEO 17-01 found F.S. 112.313(7)(b) to apply to board members of a city employees' retirement plan. See F.S. 627.351(6)(c)4 regarding certain Citizens Property Insurance Corporation board members. F.S. 20.61(3) may bring one member of the Technology Advisory Council within the scope of F.S. 112.313(7)(b).

4. An elected public officer may be employed by a "501(c)" tax-exempt organization that contracts with the officer's agency, as long as the officer's employment is not compensated as a result of the contract, the officer does not participate in the agency's decision to contract, and the officer abstains from voting on matters involving the officer's employer and otherwise follows the voting conflicts law. F.S. 112.313(15), CEO 97-05, CEO 01-4, CEO 07-11, CEO 10-16, CEO 15-01. Note that this exemption only applies to "employment"; it does not apply to "contractual relationships" (CEO 98-11, note 2). Under particular facts, CEO 09-23 applied the exemption, via F.S. 112.316, to a school board member's employment with a State college [not a 501(c) organization] which operated a charter high school approved by the school board.

5. The exemptions contained in F.S. 112.313(12) (noted above) are applicable to exempt conflicts under 112.313(7): for advisory board members (CEO 16-2, CEO 16-9) [but see above under F.S. 112.313(3) regarding how to determine whether a given board is or is not "advisory"]; depositories of public funds; passage on a common carrier; contracts awarded by sealed, competitive bid; emergency purchases; legal advertising in a newspaper; aggregated transactions not exceeding $500; and utilities service (CEO 11-12, note 7). And, at the local government level, business/work handled through a rotation system (CEO 11-9) or sole sources of supply.

6. When a public officer or employee privately purchases goods or services from a business entity which is doing business with his or her agency, the transaction is exempted from 112.313(7) if the purchase is "at a price and upon terms available to similarly situated members of the general public." F.S. 112.313(12)(i).

7. Similarly, an officer or employee may purchase goods or services from a regulated business when the price and terms are available to similarly situated members of the public and full disclosure of the relationship is made prior to the transaction to the State agency head or local governing body (e.g., county commission). F.S. 112.313(12)(j). Found not to apply
when officer's corporation, rather than officer as a natural person, purchased limousine service. CEO 08-23.

8. The Commission has applied F.S. 112.316 to "grandfather" in employment or contractual relationships with business entities doing business with the officer's or employee's agency, usually when both the employment or contractual relationship and the business relationship with the agency predate the officer's holding office or the employee's public employment. CEO 82-10, CEO 96-31, CEO 96-32, CEO 02-14, CEO 02-19 (employee county attorney), CEO 08-4 (note 6), CEO 09-1. And see CEO 09-20, in which it was found that grandfathering was available to negate a conflict where the business was entered into during a prior office holding, during which an official held no employment with the company, and where the official then left office, followed by his employment with the company and his subsequent election and taking of office again. But renewals/extensions/amendments, after one takes office, of a grandfathered contract can violate the statute (CEO 02-14, CEO 08-8, CEO 09-1), as can entry into new contracts after one takes office (CEO 09-20, CEO 10-16). And the Commission also has applied F.S. 112.316 to negate a conflict in a "piggy-back" contract situation. CEO 07-23. However, F.S. 112.316 is not necessarily applicable, via "grandfathering," to negate a conflict under the second, as opposed to the first, part of F.S. 112.313(7)(a). CEO 97-15. See CEO 11-17 regarding a hospital district board commissioner and grandfathering. CEO 14-16 grandfathered a contract regarding physicians who would become employees of a hospital district. Also, as with situations under F.S. 112.313(3), F.S. 112.316 may apply to negate conflict under F.S. 112.313(7) occasioned by matters in which a public officer or employee played and plays no material public role regarding his or her business or secondary employer (but note that application of F.S. 112.316 can be limited, especially regarding governing board members and other high-ranking personnel or "central office" personnel, CEO 12-9, CEO 12-15). See, for example, CEO 01-12 and CEO 02-6 [county commissioner serving as county-funded, court-appointed indigent defense counsel (but not as special public defender contracting with county), under scheme set prior to his becoming a commissioner]; see CEO 03-9 (county parks and recreation department employees providing on-site security for county parks); see CEO 06-10 (Department of Agriculture and Consumer Services employees participating in cost-share programs administered by the Division of Forestry); see CEO 08-28 (county recreation employee also Special Olympics employee); see CEO 09-3 (city fire lieutenant); see CEO 10-23 (city tennis professional employee also operating pro shop); see CEO 14-24 (county employee contacting with county to be independent contractor after retirement); and see CEO 10-24 (city economic development commission/downtown development review board). Also, see CEO 05-6 (not applicable to negate conflict of employee of Agency for Persons with Disabilities occasioned by employee's operation of group home); but see F.S. 393.0654 (and CEO 14-23, which construes F.S. 393.0654). Additionally, see CEO 06-25 (deputy sheriff employed by company contracting with sheriff's office). CEO 14-04 applied F.S. 112.316 to negate the application of the first part of F.S. 112.313(7)(a) where a FDOT employee removed himself from the contract-selection process involving his former private employer and where the employee's remaining relationship with the former employer involved only his holding a very small percentage of its stock via his pension. Further, F.S. 112.316 has been applied in a situation in which a county commissioner owned a small number of shares in a large, publicly-traded corporation (CEO 05-8), in a situation in which a State-level employee owned a small number of stock options in a large, publicly-traded telecommunications company (CEO 05-18), and in a situation in which a hospital district board member was employed by a large corporation making limited sales of equipment to the district (CEO 10-7). In addition, F.S. 112.316 has been applied
to negate a conflict under F.S. 112.313(7)(a) where a member of a housing authority joined a law firm contracting with the authority, where the contract/business between the authority and the law firm was entered into before the member became connected to the firm. CEO 07-1. And, F.S. 112.316 was applied to negate, without the use of grandfathering, a conflict regarding a severance package from a former employer held by an executive director of a shipping port. CEO 13-11. F.S. 112.316 was relevant to a decision of no prohibited conflict where an airport authority commissioner donated (with mutual obligations) his right to purchase a property to the authority. CEO 13-13. See CEO 17-12 as to a member of the Board of Governors of the State University System. But be careful to analyze a given situation in light of the second part of F.S. 112.313(7)(a), as a F.S. 112.316 grandfathering alone may not be adequate to exempt a situation from creating a continuing or frequently recurring conflict or an impediment to public duty. CEO 09-1.

9. Officers of collective bargaining organizations (e.g., police unions) can be excluded from the prohibitions of the first part of the statute, but not necessarily from the prohibitions of the second part. CEO 04-13.

10. F.S. 112.316 can be applied to negate a rote application of F.S. 112.313(7)(a), and thus find no prohibited conflict of interest, where there is a "unity of interest." See, for example, CEO 11-23, which found no prohibited conflict for district school board members, the district superintendent, and district employees, where they served without compensation on the board of a charter school created by the district board's application to itself for the charter school.

11. Compliance with the voting conflicts law, F.S. 112.3143, will not obviate a conflict under F.S. 112.313(7); the two statutes operate independently. CEO 94-5, CEO 12-9.

12. Removal of a public employee's public capacity interaction with certain persons or entities interfacing with the employee's public agency has been recognized, in a certain situation, as a factor in negating a prohibited conflict under the second part of the statute. CEO 13-12.

V. PROHIBITION ON EMPLOYEES HOLDING OFFICE; DUAL PUBLIC EMPLOYMENT

A. No person may both be an employee of a county, municipality, special taxing district, or other political subdivision, or of a State agency, and hold office as a member of the governing board, council, commission, or authority which is his or her employer. F.S. 112.313(10). Both positions must be held at the same time for a violation to exist. CEO 12-3.

B. However, a school teacher may take a leave of absence without pay to serve on the school board without violating this prohibition. Wright v. Commission on Ethics, 389 So. 2d 662 (Fla. 1st DCA 1980). CEO 14-10 found a county employee who would serve on the county commission to be similarly protected by an unpaid leave of absence.

C. Does not prohibit simultaneous employment/office-holding for different political subdivisions. For example, a public school teacher or other school district employee is not prohibited by this provision from serving as a member of the city council of a city located within the school district. CEO 02-4. But see F.S. 112.3125, below.

D. A fire district commissioner's service as a district firefighter, provided he refuses in advance and in writing his compensation (per-run payments), is not violative of the statute. CEO 00-23.
E. The prohibition can be negated, in particular circumstances, by the application of F.S. 112.316. CEO 06-2 (city housing authority commissioner manager of tutoring site on authority property).

F. F.S. 112.313(10) has been found not to prohibit a county commissioner from being employed in the same county's sheriff's office; but note that this dual position-holding was found to be prohibited by F.S. 112.313(7)(a). CEO 12-12.

G. The prohibition of F.S. 112.313(10) is separate from the "dual office-holding" prohibition of Article II, Section 5(a), Florida Constitution.

H. Chapter 2013-36, L.O.F., created F.S. 112.3125. The new statute greatly restricts the ability of elected state or local officers, and candidates for such offices, to accept employment with the State or any of its political subdivisions. There is a limited "grandfathering," but not as to promotions, advancements, or additional compensation. The law is self-explanatory; therefore, its detail will not be repeated here. In CEO 13-10, the Commission found that the law did not apply to a situation where a county commissioner's limited liability company contracted with a school board/district. CEO 14-10 found that a county employee who took a leave of absence to serve on the county commission and who was no longer a county commissioner when he was reactivated as a county employee would not violate the statute. Under a particular set of facts, CEO 15-7 found that the statute would not prohibit a school board member from also serving as a county manager. CEO 15-8 found that neither school board membership nor state college trusteeship constituted "public employment" prohibited by the statute.

VI. RESTRICTION ON PROFESSIONAL AND OCCUPATIONAL LICENSING BOARD MEMBERS; AND RESTRICTION ON BOARD OF GOVERNORS OF STATE UNIVERSITY SYSTEM AND TRUSTEES OF UNIVERSITIES SERVING AS A LEGISLATIVE LOBBYIST

A. No officer, director, or administrator of a Florida state, county, or regional professional or occupational organization or association, while holding such position, shall be eligible to serve as a member of a State examining or licensing board for the profession or occupation. F.S. 112.313(11). However, the restriction does not encompass enumerated service with a national or regional (e.g., southern states) organization or association (CEO 85-74 and CEO 83-68); and the restriction applies only to enumerated positions within a covered organization or association (CEO 90-61). Was found, under specific facts, not to apply to simultaneous service on the Florida Real Estate Appraisal Board and service for a private organization whose members came from various professions (CEO 13-18).

B. F.S. 112.313(17) prohibits citizen members of the Board of Governors of the State University System and citizen members of boards of trustees of local constituent universities from holding employment or a contractual relationship as a legislative lobbyist requiring annual registration and reporting pursuant to F.S. 11.045.

VII. MISUSE OF PUBLIC POSITION PROHIBITION

A. Public officers, public employees, local government attorneys, and "privatized" chief administrative officers of political subdivisions (F.S. 112.3136) 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. F.S. 112.313(6).

B. "Corruptly" is defined in F.S. 112.312(9) to mean:

- 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.

C. The statute has been upheld as not being void for vagueness. Tenney v. Commission on Ethics, 395 So. 2d 1244 (Fla. 2d DCA 1981); Garner v. Commission on Ethics, 415 So. 2d 67 (Fla. 1st DCA 1982).

D. In order to have acted "corruptly," one must have acted "with reasonable notice that conduct was inconsistent with the proper performance of her public duties and would be a violation of the law or the code of ethics." Blackburn v. Commission on Ethics, 589 So.2d 431 (Fla. 1st DCA 1991). A determination that one acted corruptly must be supported by substantial competent evidence. Kinzer v. Commission on Ethics, 654 So. 2d 1007 (Fla. 3d DCA 1995). The standard of proof is clear and convincing evidence. Latham v. Florida Commission on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997).

E. Mismanagement, "waste in government," and negligent acts are not sufficient; there must be intentional conduct to benefit oneself or another.

F. Sexual harassment (use of position to benefit oneself) can be a violation. See Bruner v. Commission on Ethics, 384 So.2d 1339 (Fla. 1st DCA 1980), and Garner v. Commission on Ethics, 415 So.2d 67 (Fla. 1st DCA 1982); also Garner v. Commission on Ethics, 439 So.2d 894 (Fla. 2d DCA 1983).

G. See CEO 02-13 regarding proper/improper use of public agency "business cards"; see CEO 07-24 regarding a sheriff's office employee (candidate for sheriff) wearing uniform and equipment while campaigning; see CEO 08-20 regarding identification of a senator's public position in private firm descriptive information; see CEO 09-7, note 9, as to a county commissioner's promoting job creation; see CEO 13-25 regarding a senator's providing a letter of support for grant funding or for a hospice's certificate of need application; and see CEO 16-2 regarding an advisory board member placing items on public meeting agendas, writing columns while identifying herself as a public officer, and engaging in similar or related conduct.

VIII. PROHIBITION AGAINST DISCLOSURE OR USE OF CERTAIN INFORMATION

Current and former public officers, public employees, and local government attorneys are prohibited from disclosing or using information not available to members of the general public and gained by reason of their official position (except for information relating exclusively to governmental practices) for their personal gain or benefit or for the personal gain or benefit of any other person or business entity. F.S. 112.313(8); CEO 11-01. Does not prohibit use of one’s general expertise or skill, but can be violated where one would work privately regarding a particular project or matter about which he or she gained knowledge or expertise via his or her public position. CEO 04-15. Note that the statute now has applicability to "privatized" chief administrative officers of political subdivisions (F.S. 112.3136).
IX. PROHIBITION AGAINST SOLICITATION AND ACCEPTANCE OF CERTAIN GIFTS

A. Under F.S. 112.313(2), public officers, public employees, local government attorneys, "private" charter school board members [F.S. 1002.33(26)(a)], "privatized" chief administrative officers of political subdivisions [F.S. 112.3136], and candidates for nomination or election are prohibited from soliciting or accepting anything of value to the recipient based on any understanding that the vote, official action, or judgment of the official, employee, attorney, or candidate would be influenced thereby. CEO 09-21. CEO 13-2, Question 2. CEO 14-26 dealt with a city council member accepting designation by a chamber of commerce as an endorsed vendor. CEO 15-13 addressed an FDOT employee's acceptance of an opportunity from an industry association to volunteer his services on a charitable construction project team.

B. Things of value under this provision include, but are not limited to, gifts, loans, rewards, promises of future employment, favors, and services.

C. Essentially amounts to bribery and requires a quid pro quo.

X. PROHIBITION AGAINST UNAUTHORIZED COMPENSATION/GIFTS

A. Public officers, employees, local government attorneys, and their spouses and minor children (but not other relatives, e.g., a son-in-law, CEO 11-04) are prohibited from accepting any compensation, payment, or thing of value when the official knows or, with the exercise of reasonable care, should know that it is given to influence a vote or other action in which the official was expected to participate in his/her official capacity. F.S. 112.313(4).

B. The Commission has found this standard violated when a legislator received a lobbyist-paid hunting trip, when a legislator received a lobbyist-paid trip to Key West, when a mayor received free cable television service from the city's cable franchisee, and when city officials received free memberships from a country club leasing its facilities from the city. Also, this provision would be violated were an employee of the Department of Children and Family Services to receive $100 for participation in a brief survey regarding a company doing business with the Department (CEO 01-2); but see CEO 04-11 (violation unlikely under circumstances where school superintendent received “to-be-forgiven” home loan). In CEO 08-12, a fair market value, arms-length residential rental to a school board member was not found to violate the statute. In CEO 09-21, a public officer's not knowing the identity of contributors to a fund to help her ill son-in-law was a factor in there being no violation of the statute. CEO 10-9 found that the statute was not violated where the wife of a Public Service Commission member obtained contract work with a private school, where the husband of a member of the school's advisory board frequently represented intervenors before the PSC. CEO 15-11 addressed a water management district's executive director's spouse being employed by a law firm representing clients in district matters. CEO 15-13 addressed an FDOT employee's acceptance of an opportunity from an industry association to volunteer his services on a charitable construction project team.

C. The Third District Court of Appeal held the statute unconstitutionally vague in Barker v. Commission on Ethics, 654 So. 2d 646 (Fla. 3d DCA 1995), but the Supreme Court reversed in Commission on Ethics v. Barker, 677 So. 2d 254 (Fla. S. Ct. 1996). The First District
Court of Appeal held the statute not to be unconstitutionally vague. *Goin v. Commission on Ethics*, 658 So. 2d 1131 (Fla. 1st DCA 1995).

D. See CEO 14-26, which opined as to F.S. 112.313(4) in the context of a city council member accepting a chamber of commerce's designation as an endorsed vendor.

Note: the statute now has applicability to "privatized" chief administrative officers of political subdivisions. F.S. 112.3136.

**XI. GIFT PROHIBITIONS AND DISCLOSURES FOR "REPORTING INDIVIDUALS" AND "PROCUREMENT EMPLOYEES"

A. "Reporting Individuals" and "Procurement Employees" (RIPEs) also are subject to the detailed gift law provided in F.S. 112.3148. The persons subject to this law include, but are not limited to, district school board members. However, note that district school board members also are subject to F.S. 1001.421, which prohibits district school board members and their relatives, as defined in F.S. 112.312(21), from directly or indirectly soliciting or accepting any gift, as defined in F.S. 112.312(12), in excess of $50, from any person, vendor, "potential vendor," or other entity doing business with the school district; and note that F.S. 1001.421 is not a part of the Code of Ethics contained in F.S. Part III, Chapter 112. And, note the additional gift provision applicable to employees and board members of Citizens Property Insurance Corporation. F.S. 627.351(6)(d).

1. "Reporting individuals" are defined to include persons who are required by law to file the full financial disclosure statement specified in Art. II, Sec. 8, Fla. Const. (CE Form 6), and persons required to file the limited financial disclosure statement specified in F.S. 112.3145 (CE Form 1). F.S. 112.3148(2); and see F.S. 112.3136 regarding chief administrative officers of political subdivisions. Reporting Individuals who are suspended from office have been found to remain subject to the gift law while suspended. CEO 10-19. "Procurement employees" are defined to include any employee of an officer, department, board, commission, council, or agency of the executive branch or judicial branch of state government who has participated in the preceding 12 months through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing or in any other advisory capacity in the procurement of contractual services or commodities as defined in F.S. 287.012, if the cost of such services or commodities exceeds or is expected to exceed $10,000 in any fiscal year. F.S. 112.3148(2).

2. Local government attorneys who are RIPEs (by virtue of filing limited disclosure) generally are only the city attorney or the county attorney. Assistant city or county attorneys, attorneys for local government boards, and attorneys for special districts are not RIPEs. See CEO's 83-56, 84-5, 85-49. District School Board attorneys are not RIPEs, unless they come within a generic definition [e.g., "purchasing agent" as defined in F.S. 112.3145(1)(a)3, Florida Statutes (a F.S. 287.017 CATEGORY ONE purchasing agent).]

3. Based on information submitted by State and local agencies, the Commission prepares lists of persons required to file full and limited disclosure. F.S. 112.3145(7). These lists are helpful as a starting point for information about who is a reporting individual.

B. Prohibition against RIPEs Soliciting Gifts: A RIPE is prohibited from soliciting any gift from a lobbyist who lobbies the RIPE's agency, from the partner, firm, employer, or principal of such a lobbyist, from a vendor doing business with the RIPE's agency, or from a
political committee as defined in the election laws (F.S. 106.011), if it is for the personal benefit of the RIPE, another RIPE, or a parent, spouse, child, or sibling of a RIPE. F.S. 112.3148(3).

1. The prohibition against solicitation is comprehensive, there is no valuation threshold, and it applies even to food and beverages.
2. The gift must be for the personal benefit of the RIPE, a family member, or one or more other RIPEs. Therefore, a RIPE cannot solicit lobbyists for contributions toward a banquet for other RIPEs. But, solicitation of a gift intended for one's agency or for a charity, for example, is not prohibited. CEO 91-52. Under the facts of CEO 09-21 (fund established to benefit ill son-in-law of county commissioner), solicitation was not found.
3. Note that there may be provisions outside the Code of Ethics which place further restrictions on solicitations of items, but which cannot "relax" the provisions contained within the Code. See, for example, F.S. 334.195, concerning solicitation of funds by FDOT personnel from "any person who has, maintains, or seeks business relations with the department."

C. General Rule on Accepting Gifts: Subject to specific, limited exceptions, a RIPE (and any other person on behalf of the RIPE) is prohibited from knowingly accepting a gift which he or she knows or reasonably believes has a value exceeding $100: (1) directly or indirectly from a lobbyist who lobbies the RIPE's agency or from a political committee or vendor; or (2) directly or indirectly made on behalf of the partner, firm, employer, or principal of such a lobbyist. F.S. 112.3148(4).

1. On the issue of knowledge, note that Commission Rule 34-13.310(4), F.A.C., provides that "reasonable inquiry" should be made of the source of the proposed gift to determine whether it is prohibited. [All further citations to Commission rules are to F.A.C. Chapter 34-13.]
2. Where the gift is given to someone other than a RIPE by one of the prohibited group of donors and is given with the intent to benefit the RIPE, the gift is considered an indirect gift to the RIPE. Rule 310(6). This rule also provides examples of what would be considered prohibited and permitted indirect gifts, as well as the factors the Commission considers in determining whether an indirect gift has been made. See CEO 99-6 (Republican Party fundraiser at Disney World attended by public officers) and CEO 05-5 (city officials accepting admissions to speedway suite). See also CEO 06-27 (city paying travel expenses for companions of city officials) and CEO 07-3 (conference sponsor offering discounted registration rate to employees of Office of Financial Regulation). In CEO 08-2, it was determined that appearances by the Attorney General in public service announcements promoting a Florida conference for women (although constituting a gift) would not constitute an indirect gift from a prohibited donor. CEO 09-21 (fund established to benefit ill son-in-law of county commissioner) did not find an impermissible indirect gift.
3. Exceptions. Aside from the exemption for gifts from relatives, there are only three express exceptions to the general rule against accepting gifts worth more than $100 from one of the prohibited group of donors:
   a. When the gift is accepted on behalf of a governmental entity or a charitable organization. CEO 13-2, Question 2. In this instance, the recipient may maintain custody of the gift for only the time reasonably necessary to arrange for the transfer of custody and ownership of the gift. F.S. 112.3148(4). These gifts need not be reported. Rule 400(2)(d). Note that Rule 320(1)(b) defines "charitable organization" to mean an organization described in s. 501(c)(3) of the Internal Revenue Code and exempt from tax under s. 501(a). Note that travel expenses of a public official provided directly to the official by persons or entities other than the official's own public agency have been found to be gifts to the official and not gifts to his

5.25
governmental entity; but that reimbursement to an agency for the official's travel or donations to an agency travel fund can be permissible as gifts to the governmental entity. CEO 13-3.

b. When the gift is from one of certain kinds of governmental entities (an entity of the legislative or judicial branch, a department or commission of the executive branch, a county, a municipality, an airport authority, a water management district created pursuant to F.S. 373.069, the South Florida Regional Transportation Authority, a county, a municipality, or a school board), provided that a public purpose can be shown for the gift. F.S. 112.3148(6)(a)&(b). These gifts must be reported; however, in CEO 01-14, the Commission on Ethics found that office space made available by a municipality to a Legislator for use as his district office was not a "gift." Note that Rule 320(2) defines "public purpose," specifies that there must be a public purpose for the entity's having given the gift and for the RIPE's accepting the gift, and concludes that there is no public purpose for a gift involving attendance at a spectator event unless the donee has direct supervisory or regulatory authority over the event, persons participating in the event, or the entity which gave the tickets. See also CEO 91-53 (county provides telephone service to legislative delegation).

c. When the gift is from a direct-support organization (DSO) specifically authorized by law to support a governmental entity, so long as the RIPE is an officer or employee of that governmental entity. F.S. 112.3148(6)(a)&(b). These gifts must be reported. See CEO 92-14 (DSO for state university).

D. Gift Disclosures for RIPEs.

1. Quarterly Gift Disclosure (CE Form 9): Each RIPE must file this form to list each gift worth over $100 accepted by the RIPE, except for gifts from relatives, gifts required to be disclosed on other forms, and gifts the RIPE is prohibited from accepting. The deadline is the last day of the calendar quarter following the calendar quarter in which the gift was received. The form need not be filed if no reportable gift was received during the calendar quarter. However, note that the Commission rule requires a RIPE to disclose a gift reportable on this form received during the time the RIPE held his or her public position, regardless of whether the position was vacated before the form is due. The form is filed with the Commission. F.S. 112.3148(8); Rule 400.

2. Annual Gift Disclosure (CE Form 10). Each RIPE must file this form to list each gift worth over $100 received by the RIPE: from a governmental entity, for which a public purpose can be shown; or from a direct-support organization. For example, see CEO 10-11 (direct-support organization of hospital district providing gifts to district board members). The deadline is July 1 of the year following the year in which the gift was received. The form is filed along with the annual financial disclosure form. A procurement employee files with the Commission on Ethics. The form need not be filed if no reportable gift was received. F.S. 112.3148(6)(d); Rule 410. The report filed by a reporting individual or procurement employee who left office or employment during the calendar year covered by the report shall be filed by July 1 of the year after leaving office or employment at the same location as his or her final financial disclosure statement or, in the case of a former procurement employee, with the Commission on Ethics.

E. Gift Prohibitions for Donors

1. A lobbyist who lobbies a RIPE's agency; the partner, firm, employer, or principal of a lobbyist; another on behalf of the lobbyist or partner, firm, principal, or employer of the lobbyist, a political committee, or a vendor are prohibited from giving, either directly or
indirectly, a gift that has a value in excess of $100 to the RIPE or any other person on the RIPE's behalf. F.S. 112.3148(5)(a).

2. Exceptions to this prohibition mirror those for RIPEs: a gift worth over $100 may be given if it is intended to be transferred to a governmental entity or charitable organization; a gift worth over $100 may be given by certain governmental entities if a public purpose can be shown for the gift; a gift worth over $100 may be given by a direct-support organization to an officer or employee of the agency supported by the DSO.

F. Gift Disclosures Applicable to Donors.

1. Quarterly Gift Disclosure (CE Form 30): A lobbyist who lobbies a RIPE's agency, or the partner, firm, employer, or principal of such a lobbyist, who makes or directs another to make a gift having a value over $25 but not over $100 to a RIPE of that agency, must file this form to report the gift. Each political committee which makes or directs another to make a gift having a value over $25 but not over $100 to a reporting individual or procurement employee must file this form to report the gift. In addition, the donor must notify the intended recipient at the time the gift is made that the donor, or another on the donor's behalf, will report the gift. The report is filed with the Commission, except with respect to gifts to RIPES of the legislative branch (of State government), in which case the report shall be filed with the Office of Legislative Services. F.S. 112.3148(5)(b); Rule 420.

   a. The disclosure requirement does not apply to the following gifts: those which the donor knows will be accepted on behalf of a governmental entity or charitable organization; those from a direct support organization (DSO) to a RIPE of the agency supported by the DSO; or those from an entity of the legislative or judicial branch, a department or commission of the executive branch, a water management district created pursuant to F.S. 373.069, the South Florida Regional Transportation Authority, the Technological Research and Development Authority, a county, a municipality, an airport authority, or a school board.

   b. The deadline is the last day of the calendar quarter following the calendar quarter in which the gift was made. The same gift need not be reported by more than one person or entity, and the form need not be filed if no reportable gift was made during the calendar quarter.

   c. Note that the Commission rule requires the donor to disclose a gift reportable on this form, regardless of whether the donor is within the prohibited group at the time the form is due.

2. Annual Gift Statements by Governmental Entities and DSOs. No later than March 1 of each year, each governmental entity or DSO which has given a gift worth over $100 to a RIPE during the previous calendar year (where the gift is exempted) must give the RIPE a statement describing the gift, the date of the gift, and the value of the total gifts given by the entity or DSO to that RIPE during the calendar year. CEO 10-11. A governmental entity may provide a single statement covering gifts provided by the entity and any associated DSO. No form has been promulgated by the Commission for this statement. F.S. 112.3148(6)(c); Rule 430.

G. Gifts from Relatives:

1. Gifts solicited or accepted by a RIPE from a relative are not prohibited or reportable by either the RIPE or the relative, regardless of whether the relative is a lobbyist, the partner, employer, or principal of a lobbyist, or a vendor. F.S. 112.3148(1); Rules 300(3), 320(4), 400(2), 420(7).

2. The definition of "relative" is expansive, including not only family members such as in-laws and step-relatives, but also persons engaged to RIPEs, persons who hold
themselves out as or are generally known as intending to marry or form a household with the RIPE, and any person having the same legal residence as the RIPE. F.S. 112.312(21). CEO 16-1 found that a boyfriend was not a relative.

H. The Definition of "Gift." Although comprehensive in many respects, including what may be provided to the donee directly, indirectly, or through another, the definition of "gift" [F.S. 112.312(12)] contains several important exceptions. Since the definition is uniformly applicable to the prohibitions and disclosures, this has the effect of exempting transactions within an exception to the definition of gift (e.g., gifts from relatives, items received in exchange for equal or greater consideration) from being prohibited or subject to disclosure. (As the definition contains a long list of examples of what is a gift and what is not, it is not quoted here; only major concepts and exceptions are reviewed.)

1. Included in the definition are several items that might not normally be considered a gift. These include the use of real or personal (tangible and intangible) property; a preferential rate or terms on a debt, loan, goods, or services, which rate is not a government rate or available to similarly situated members of the general public by virtue of certain private attributes; transportation (other than transportation provided by an agency in relation to officially approved governmental business), lodging, and parking; personal and professional services; and any other service or thing having an attributable value. Free publicity or exposure for members of the Legislature can constitute a "gift" (CEO 05-11), as it can for a city commissioner (CEO 08-29). Informational material can be a gift (CEO 16-3).

2. If equal or greater consideration is given (within 90 days of receipt of the gift), it is not a gift; "consideration" does not include a promise to pay or otherwise provide something of value unless the promise is in writing and enforceable through the courts. F.S. 112.312(12)(a) and 112.312(12)(d). Based upon this concept, the Commission's rule specifies that salary, benefits, services, fees, or other expenses (including travel expenses when a public purpose for the travel exists) received by a RIPE from his or her public agency do not constitute gifts. However, services rendered by the RIPE on behalf of the RIPE's agency by use of official position do not count as consideration for a gift from a person or entity other than the agency. CEO 01-19, CEO 05-5 (regarding speedway admissions). The rule provides that substantiating equal or greater consideration is the responsibility of the donee. CEO 01-13. This can be done by providing information demonstrating the fair market value of items of merchandise, supplies, raw materials, or finished goods provided by the donee to the donor. In the case of personal labor or effort for the benefit of the donor, the length of time, value of the service provided, and whether others providing similar services for the donor received a comparable gift will be reviewed by the Commission. Rule 210. CEO 01-13. In CEO 13-2, the Commission found that a charity auction purchase by a public officer of a poker party provided to the charity by a principal of a lobbyist of the officer's public agency was not a gift because the auction was open to all and the auction price was adequate consideration for the poker party. CEO 16-1 found that if a couple (public officer and her boyfriend) shared the cost equally of travel, meals, lodging, or entertainment, the officer had provided adequate consideration and thus had not received a gift. CEO 17-13 found that meet and greet services, media services, and other platforms for which fair market values were paid are not "gifts."

3. There is a significant exclusion for salary, benefits, services, fees, commissions, expenses, and even gifts associated primarily with the donee's employment or business, or with the donee's service as an officer or director of a corporation or organization. F.S. 112.312(12)(b1); CEO 14-26; CEO 09-1; CEO 10-11; CEO 15-9. Rule 214 states that this means
those things associated with the donee's principal employer or business occupation and unrelated to the donee's public position. EXAMPLE: Fees or even gifts received by a RIPE from a client of his or her private law practice, with no other relationship between the RIPE and the client, would not be a prohibited or reportable gift. However, in CEO 92-33 tickets from one's agency to theater performances were not considered "benefits" under the rule, unlike benefits typically associated with employment.

4. Except as provided in F.S. 112.31485, contributions or expenditures reported under the campaign financing law, campaign-related personal services provided by volunteers, and any other contribution or expenditure by a political party are exempted.

5. An honorarium or expense related to an honorarium event paid to a RIPE or spouse is exempted. These are treated exclusively under the honorarium law.

6. Effective January 1, 1997, food and beverages consumed at a single sitting or event came within the definition of gift. Chapter 96-328, Laws of Florida. Therefore, a cup of coffee or a meal may be prohibited or reportable, depending on value.

I. The Definition of "Lobbyist." A "lobbyist" is defined to mean any natural person who is compensated for seeking to influence the governmental decisionmaking of a RIPE or the agency of a RIPE or for seeking to encourage the passage, defeat, or modification of any recommendation or proposal by a RIPE or the RIPE's agency; it also includes any person who did so during the preceding 12 months. F.S. 112.3148(2)(b); Rule 240.

1. A lobbyist is being compensated when receiving a salary, fee, or other compensation for the action taken. Rule 240. Thus, any employee of an organization, including the chief executive officer or a salesperson, who is contacting the agency as part of his or her job may be lobbying. On the other hand, an unpaid volunteer member of a nonprofit organization who seeks to influence governmental decision making will not be a lobbyist (but see 4, below, for a possible exception).

2. All types of governmental decisionmaking or recommendations are included, whether they fall in the area of procurement, policy making, investigation, adjudication, or any other area. Rule 240(3).

3. A purely informational request made to an agency and not intended in any way to directly or indirectly affect a decision, proposal, or recommendation of a RIPE or an agency does not constitute lobbying. One must have the intent to affect a decision, proposal, or recommendation and take some action that directly or indirectly furthers or communicates one's intention. Rule 240(4).

4. For agencies that have established by rule, ordinance, or law a registration or other designation process for persons seeking to influence decision making or to encourage the passage, defeat, or modification of any proposal or recommendation by such agency or an employee or official of the agency, a "lobbyist" includes only a person who is required to be registered or otherwise designated as a lobbyist in accordance with that process or who was so required during the preceding 12 months. F.S. 112.3148(2)(b). However, the local registration system must be at least as broad in defining who is a "lobbyist" as the Legislature's registration system in order to define who is a lobbyist for purposes of the gift and honoraria laws.

J. Valuation of Gifts.

1. The general method for valuation uses the actual cost to the donor (less taxes and gratuities) rather than fair market value of the gift, but several exceptions are provided. The Commission's Rule specifies that "actual cost" means the price paid by the donor which enabled the donor to provide the gift to the donee; if the donor is in the business of selling the item or
service (other than personal services), the donor's actual cost includes the total costs associated with providing the items or services divided by the number of units of goods or services produced. F.S. 112.3148(7); Rule 500(1). CEO 17-16 found, under particular circumstances, that the naming of a public facility for a sitting public official involved not cost to the donor, and thus was not a prohibited gift.

2. Personal services provided by the donor, meaning individual labor or effort performed by one person for the benefit of another, are valued at the reasonable and customary charge regularly charged for such service in the community in which the service is provided. F.S. 112.3148(7)(a); Rule 500(2).

3. Compensation provided by the donee to the donor is deducted from the value of the gift in determining the value of the gift. Under the Commission's rule, compensation includes only payment by the donee to the donor and excludes personal services rendered by the donee for the benefit of the donor. However, recall that services by the donee may constitute equal or greater consideration, with the result that no gift has been made. The compensation principle gives rise to the so called "$100 deductible," under which the official pays all but $100 of the value of the gift in order to be allowed to accept the gift; but see H.2 above regarding the requirement of payment within 90 days.

4. If the actual value attributable to a participant at an event cannot be determined, the total costs are prorated among all invited persons, including nonRIPEs. F.S. 112.3148(7)(c).

5. Transportation is valued on a round-trip basis and is a single gift, unless only one-way transportation is provided. Transportation in a private conveyance is given the same value as transportation provided in a comparable commercial conveyance. The rule specifies that this means a similar mode and class of transportation which is available commercially in the community; transportation in a private plane is valued as an unrestricted coach fare. If the donor transports more than one person in a single conveyance at the same time, the value to each person is the same as if it had been in a comparable commercial conveyance. F.S. 112.3148(7)(d); Rule 500(4).

6. Lodging on consecutive days is a single gift. Lodging in a private residence is valued at $44 per night (the per diem rate less the meal rate provided in F.S. 112.061). F.S. 112.3148(7)(e).

7. Where the gift received by a donee is a trip and includes payment or provision of the donee's transportation, lodging, recreational, or entertainment expenses by the donor, the value of the trip is equal to the total value of the various aspects of the trip. Rule 500(3).

8. Food and beverages consumed at a single sitting or event are considered a single gift, valued according to what was provided at that sitting or meal; other food or beverages provided on the same calendar day are considered a single gift, valued at the total provided on that day. F.S. 112.3148(7)(f). If the gift is food, beverage, entertainment, etc. provided at a function for more than ten people, the value of the gift is the total value of the items provided divided by the number of persons invited, unless the items are purchased by the donor on a per person basis.

9. Tickets and admissions to events, functions, and activities are a frequent source of inquiries. Generally, the rule is that the value is the face value of the ticket or admission fee, but if the gift is an admission ticket to a charitable event AND is given by the charitable organization, that portion of the cost which represents a charitable contribution is not included in valuing the gift. F.S. 112.3148(7)(k) and CEO 04-12 (opining as to a charitable golf tournament). Rule 500(5) provides a number of specific examples and principles for valuing this type of gift.
especially relating to football tickets, booster fees, and seating in a skybox. Skybox tickets given by a county for professional basketball playoff games would be valued at the cost of admission to persons with similar tickets. CEO 95-36 and CEO 96-02. Multiple tickets received at one time by a RIPE to be used by the RIPE or given to others are valued by multiplying the number of tickets given times the face value of each (CEO 92-33). CEO 16-10 valued tickets/admission to a particular charity polo match.

10. Where the donor is required to pay additional expenses as a condition precedent to being eligible to purchase or provide the gift, and where the expenses are for the primary benefit of the donor or are of a charitable nature, those expenses are not included in determining the value of the gift. Examples: A lobbyist's golf club membership fees, for the personal benefit of the lobbyist, are not included when valuing the gift of a round of golf; and the portion of a skybox leasing fee allocated to the FSU Foundation, Inc. (expenses of a charitable nature) is not included in the value of a skybox seat. Rule 500(7) and CEO 94-43.

11. Membership dues paid to one organization during any 12 month period are considered a single gift. F.S. 112.3148(7)(g).

12. Unless otherwise noted, a gift is valued on a per occurrence basis, meaning each separate occasion on which a donor gives a gift to a donee. F.S. 112.3148(7)(i); Rule 500(6).

K. Multiple donors.
1. In determining whether a gift is prohibited, the value of the gift provided to a RIPE by any one donor equals the portion of the gift's value attributable to that donor based upon the donor's contribution to the gift. The value of the portion provided by any lobbyist or other prohibited donor cannot exceed $100; if it does, the RIPE cannot accept the gift. Rules 310(5), 510(2). CEO 08-19.

2. Regardless of whether the gift is provided by multiple donors, the RIPE must disclose it if the value of the gift as a whole exceeds $100. Rule 510(1). CEO 08-19.

3. In determining whether a donor must disclose a gift ($25-$100) or provide a statement to the RIPE about the gift (over $100), the value of the gift provided by any one donor equals the portion of the gift's value attributable to that donor based upon the donor's contribution to the gift. If that value exceeds the threshold, the donor must disclose the gift or provide the statement. Rules 420(9), 430(4), 510(3). CEO 08-19.

L. Newly-created F.S. 112.31485 (via Chapter 2013-36, L.O.F.) prohibits a RIPE or a member of a RIPE's immediate family from soliciting or knowingly accepting, directly or indirectly, any "gift" from a political committee; and prohibits a political committee from giving such a gift. For purposes of this prohibition, "gift" is defined to mean "any purchase, payment, distribution, loan, advance, transfer of funds, or disbursement of money or anything of value that is not primarily related to contributions, expenditures, or other political activities authorized pursuant to chapter 106." This statute is in addition to the provisions of F.S. 112.3148, discussed above.

M. F.S. 627.351(6)(d)4 contains an additional gift prohibition for employees and board members of Citizens Property Insurance Corporation.

XII. PROHIBITED “EXPENDITURES” AT THE STATE LEVEL

[Note: In addition to the gift and honoraria laws codified at F.S. 112.3148 and 112.3149, the legislature enacted, in a December 2005 Special Session, Chapter 2005-359, L.O.F. (amending F.S. 112.3215), which addresses legislative and executive-branch lobbying at the state level. The
law contains substantial obligations, prohibitions, and requirements. However, while the law may apply to certain lobbying-related gifts, expenditures, or activities made by or on behalf of local governments to state level officials, it does not apply to such items or activities directed at local government officials. Nevertheless, the law did not repeal any prohibition of sections 112.3148 and 112.3149, which continue to apply at both the state and local levels. The Commission on Ethics has developed rules and renders advisory opinions regarding the portion of the law which it administers (Executive-Branch portion, F.S. 112.3215, Florida Statutes; and the legislature has established lobbying guidelines for the House and Senate.) See CEO 06-4 (Executive Branch lobbying, agency officials and employees buying tickets to association's annual legislative reception), CEO 06-6 (engagement party or wedding gifts paid for by lobbyists), CEO 06-7 (donations to the Department of Agriculture and Consumer Services and its direct-support organization given by principals of lobbyists), CEO 06-11 (Governor and staff traveling on trade mission paid for by Enterprise Florida, Inc.), CEO 06-14 (corporate donations used to underwrite costs of annual Prudential Financial-Davis Productivity Awards), CEO 06-15 (corporate gifts and donations to the United Way for the annual Florida State Employees' Charitable Campaign), CEO 06-17 (promotional items given away by insurance provider to state employees attending benefit fairs), CEO 06-18 (discounted cellular telephone service offered to Department of Revenue employees by company whose lobbyists are registered to lobby the executive branch), CEO 07-3 (conference sponsor offering discounted registration rate to employees of Office of Financial Regulation), CEO 07-8 (lobbying firms and prohibited indirect expenditures), CEO 08-2 (Attorney General appearing in public service announcements), and CEO 09-1 (Citizens Insurance board member). Also, see F.S. 112.3215(1)(d) regarding what is an "expenditure." Many government entities have been found not to be an "agency" for purposes of F.S. 112.3215 (CEO 08-19). Expenditures from one who lobbies any executive branch agency have been found to be prohibited as to certain officials or employees of all executive branch agencies (CEO 08-19). Reimbursement to a public agency, as opposed to an agency employee, has been found not to be a prohibited expenditure (CEO 08-26). See CEO 12-16, regarding recorded greetings by the Governor being played on airport shuttle buses. CEO 16-3 found that attendance, at no cost, at purely informational briefings and gatherings (hosted by companies which were principals of executive branch lobbyists) at which the only thing of value received was the oral and written information distributed, was not prohibited. CEO 17-16 found, under particular circumstances, that the naming of a public facility for a sitting public official was not a prohibited expenditure.

XIII. HONORARIA AND HONORARIUM EVENT-RELATED EXPENSES

A. An "honorarium" is defined to mean a payment of money or anything of value, directly or indirectly, to a RIPE or to any other person on the RIPE's behalf, as consideration for a speech, address, oration, or other oral presentation; or for a writing (other than a book) which is or is intended to be published. F.S. 112.3149(1)(a).

1. The Commission's rule specifies that the speech or other oral presentation means a formal address, lecture, panel discussion, or other presentation which a RIPE has been invited to make to a gathering of persons, and further provides examples of documentation evidencing a genuine presentation by the RIPE, rather than a subterfuge to allow an otherwise prohibited gift. Rule 220.

2. The term "honorarium" specifically excludes: payment for services related to outside employment; ordinary payments or salary received for services related to the RIPE's
public duties; a campaign contribution reported as required by law; and the payment or provision of actual and reasonable transportation, lodging, event or meeting registration fees, and food and beverage expenses related to the honorarium event for the RIPE and spouse. F.S. 112.3149(1)(a). Rule 220(3) concludes that to the extent that the expenses paid or provided for exceed those that are actual and reasonable, that amount constitutes an honorarium. The rule also specifies a number of circumstances the Commission will consider in determining the reasonableness of expenses paid or provided, again in an effort to see that this exception does not allow an otherwise prohibited gift or honorarium.

B. A RIPE is prohibited from soliciting an honorarium from anyone, regardless of amount, when the subject of the speech or writing relates to the RIPE's public office or duties. F.S. 112.3149(2).

C. Prohibition Against Accepting or Providing Honoraria. A RIPE is prohibited from knowingly accepting an honorarium from: a lobbyist; the employer, principal, partner, or firm of a lobbyist; a political committee; or a vendor. Similarly, these persons and entities are prohibited from providing an honorarium to a RIPE. There is no $100 threshold for honoraria, as there is for gifts. As with gifts, the Commission's rule states that "reasonable inquiry" should be made by the RIPE to determine whether the honorarium is prohibited. F.S. 112.3149(3) & (4); Rules 620 & 630.

D. A RIPE must disclose the receipt of payment for, or the provision of, expenses related to an honorarium event from a person or entity that is prohibited from paying an honorarium to the RIPE. There is no $100 threshold for this disclosure requirement. Honoraria or honorarium event-related expenses paid or provided by any other person or entity are not required to be disclosed. CEO 91-57. The statement (CE Form 10) is due by July 1 for expenses paid for or provided during the prior calendar year, but the form need not be filed if there is nothing to report. The form is filed along with the annual financial disclosure. F.S. 112.3149(6); Rule 710. A procurement employee files with the Commission on Ethics. The statement filed by a reporting individual or procurement employee who left office or employment during the calendar year covered by the statement shall be filed by July 1 of the year after leaving office or employment at the same location as his or her final financial disclosure statement or, in the case of a former procurement employee, with the Commission on Ethics.

E. No later than 60 days after the honorarium event, the person or entity paying or providing a RIPE's honorarium event-related expenses must provide to the RIPE a statement listing the name and address of the person or entity, a description of the expenses provided each day, and the total value of the expenses provided for the event. This applies only to persons and entities that are prohibited from paying an honorarium to the RIPE. No form has been promulgated by the Commission for this statement. F.S. 112.3149(5).

F. Note that the expenditure ban of F.S. 112.3215(6)(a) may prohibit honoraria event-related expenses not prohibited under F.S. 112.3149; and that F.S. 112.31485 (gifts involving political committees) could prohibit the payment of expenses not prohibited by F.S. 112.3149.

XIV. LOCAL GOVERNMENT ATTORNEYS

A. All "local government attorneys" are subject to the provisions of the Code of Ethics contained in F.S. 112.313(2), (4), (5), (6), & (8). Government employee (not independent contractor) local government attorneys, and public officer local government attorneys (e.g., a city attorney where the city's charter states that the city attorney is among the officers of city
government, like the mayor or the police chief), also are subject to F.S. 112.313(3) & (7).  F.S. 112.313(16); CEO 02-19, note 3.

B. A "local government attorney" is defined to mean "any individual who routinely serves as the attorney for a unit of local government." "Unit of local government" includes, but is not limited to, municipalities, counties, and special districts. Expressly excluded from the definition are attorneys who render services limited to a specific issue or subject, to specific litigation, or to a specific administrative proceeding.

C. Unless the local government attorney is a full-time employee or governing board member of the unit of local government, it is not conflicting under F.S. 112.313(3) or 112.313(7) for the attorney's law firm to provide services to the governmental unit; however, the local government attorney may not refer legal work to his or her firm unless authorized by contract. Also, the firm may not represent private clients before the governmental unit. F.S. 112.313(16).

D. The Commission on Ethics did not find F.S. 112.313(16) to apply to a situation involving a public employee general counsel/executive director whose employment was not limited to the provision of legal services. CEO 08-15.

E. See CEO 17-18, finding an attorney serving as the attorney for a value adjustment board to be a "local government attorney," and finding the board to be a "unit of local government."

XV. CHIEF ADMINISTRATIVE OFFICERS OF POLITICAL SUBDIVISIONS

A. 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, for the purposes of the following sections, are public officers and employees who are subject to F.S. 112.313 [various standards of conduct, with qualifications], 112.3145 [financial disclosure and other disclosures], 112.3148 [gift laws], and 112.3149 [honoraria laws]. F.S. 112.3136. CEO 09-17, CEO 10-01. CEO 14-13 found, under the facts presented regarding a particular city, that neither the city's financial services firm nor the firm's personnel were subject to F.S. 112.3136.

B. For F.S. 112.313 purposes, their "agency" is the political subdivision that they serve.

C. The contract under which the business entity serves as chief executive or administrative officer is not deemed to violate F.S. 112.313(3) or (7).

XVI. CHARTER SCHOOL BOARD MEMBERS/PERSONNEL [F.S. 1002.33(24) & (26)]

A. Charter school governing board members, including members of governing boards of charter schools operated by a private entity, are subject to F.S. 112.313(2), (3), (7), and (12), and to F.S. 112.3143(3). CEO 11-23.

B. Charter school personnel in schools operated by a municipality or other public entity have been made subject to F.S. 112.3135 (the anti-nepotism law). And to F.S. 112.3145 (financial disclosure), via Chapter 2011-232, L.O.F.

C. Certain charter school personnel in charter schools operated by a private entity are subject to restrictions like the restrictions of F.S. 112.3135, but apparently without the administration of the restrictions being placed in the Commission on Ethics. AGO 10-14.
D. An employee of a charter school, or his or her spouse, or an employee of a charter management organization, or his or her spouse, may not be a member of the governing board of the charter school. F.S. 1002.33(26)(c).

XVII. POST OFFICE-HOLDING AND POST EMPLOYMENT (REVOLVING DOOR) RESTRICTIONS

A. F.S. 112.313(9) contains a two-year prohibition on former legislators, statewide elected officers, selected exempt service employees, senior management service employees, and certain others representing persons or entities before their former agencies. CEO 10-14 found that a former Assistant State Attorney was not subject to the prohibition because his public position had not been that of an "employee" under the applicable definition; and CEO 16-11 found that a staff director of the House of Representatives Bill Drafting Service was not an "employee" subject to the prohibition. Applies only to certain former State-level employees or officers; does not apply to former local (e.g., city housing authority) employees or officers (CEO 07-19, note 3). CEO 14-20 found that a member of the New Motor Vehicle Arbitration Board is an appointed state officer subject to the prohibition.

1. Usually does not apply to former career service employees. CEO 00-09. Under certain circumstances, was found not to apply to former career service employees subjected to an en masse transfer to selected exempt service (CEO 02-1); but see Section 2, Chapter 2006-275, L.O.F., bringing those transferred en masse under the prohibition. CEO 12-4. In CEO 14-31, the Commission found that the position of Administrative Law Judge (ALJ) of the Division of Administrative Hearings (DOAH) is not a position within the prohibition. CEO 18-01 found F.S. 112.313(9)(a)4 not to be applicable to a former employee of the Florida Housing Finance Corporation.

2. Was found, in a particular situation, not to apply to a former Other Personal Services (OPS) employee (CEO 05-1); but see Section 2, Chapter 2006-275, L.O.F., bringing OPS employees under the prohibition.

3. If applicable, effects are broad due to definition of "represent" codified in F.S. 112.312(22). CEO 09-5; CEO 11-24, note 10. But see CEO 11-03, finding, under a similar prohibition, that certain expert witness services involving a public agency did not amount to "representation" before the agency; and see CEO 11-7, finding that a former Secretary of the Department of Community Affairs could serve as an expert witness.

4. To be applicable, the representation must be regarding a matter before one's former agency; however, note that a matter can be "before" one's former agency regardless of whether or not the former agency is the locus of the authority to take final action regarding the matter. See CEO 06-1, in which the Commission found that a FDOT former SES employee would be prohibited by F.S. 112.313(9)(a)4 from personally representing another person or entity for compensation against FDOT in eminent domain proceedings, in eminent domain presuit negotiations, in an inverse condemnation lawsuit, and in negotiations prior to an inverse condemnation lawsuit. As to the extent of one's former "agency," see CEO 02-12, CEO 03-10, CEO 04-16, CEO 06-1, CEO 07-4 (former employee of Department of Financial Services and Office of Insurance Regulation), CEO 09-6 (former employee of Commission for the Transportation Disadvantaged), CEO 09-11 (former DCF employee), CEO 10-13 (former senior attorney of Agency for Workforce Innovation), CEO 11-19 (former DCA/AWI employee), and CEO 16-14 (former FDEP employee). The whole of the Department of Revenue was found to be
the agency of a former senior attorney of the Department, in CEO 17-02. For purposes of the prohibition, CEO 08-18 found that the agency of a former employee of the Florida Turnpike Enterprise (FTE) was the FTE, not the whole of the FDOT. Note that CEO 11-10 clarified that the "agency" of a particular former FDOT District employee was the District, and not the whole of FDOT; but that CEO 11-21 and CEO 12-17 found that other FDOT employees had two Districts as their "agency," due to their particular work histories. And see CEO 11-24, as to "agency," finding that a former DCF employee was restricted as to both DCF’s Central Region and its SAMH Tallahassee Program Office, due to her having a presence at both during her DCF employment. CEO 12-22 found the "agency" of a former FDOT central office employee to be the central office and all FDOT Districts, due to his work history at FDOT.

5. Is ameliorated by certain "grandfathering." CEO 94-20; CEO 00-01; CEO 08-21 (as to former PSC employee); CEO 14-30 (former FDOT employee grandfathered); but CEO 14-01 found that a former FDOT employee was not grandfathered out of the prohibition where he had changed from one district to another within FDOT after the 1989 grandfather date, even though he had begun work (in the other FDOT district) prior to the grandfather date.

6. Applies only to representations before one's former "agency," and not to representations before all of State government. CEO 00-20, CEO 00-11, CEO 02-12, CEO 12-4. Actions necessary to carry out, as opposed to actions to obtain, a contract with one's former agency apparently do not constitute "representation" within the meaning of the prohibition (CEO 00-6; CEO 01-5; CEO 05-16; CEO 05-19, note 5; CEO 06-3; CEO 09-5; and CEO 12-17); but see F.S. 112.3185 below. CEO 11-19 found that one's provision of good-faith responses to unsolicited inquiries for information would not amount to prohibited "representation."

7. Does not apply vicariously to other members of one's post-public-service firm. CEO 00-20; CEO 09-5.

8. One was found to be an "appointed" state officer when he was chosen by other members of his public board rather than selected by a more traditional method of "appointment." CEO 13-6.

9. Has been found not to apply where the former employee is listed in bid response documents written or filed by another person. CEO 09-6.

10. Former employees are exempt if their new employment is with another agency of State (not local or regional) government. CEO 11-22. A State University is an agency of State government satisfying the exemption. CEO 14-32.

11. Former legislators are not expressly exempted via taking State-level public employment; but in certain contexts the Commission on Ethics has constructed such an exemption. CEO 00-7, CEO 00-18. However, the Commission receded from CEO 00-7 and CEO 00-18 in CEO 09-4.

12. As to a former Attorney General, see CEO 10-22. As to a former commissioner and chair of the Florida Commission on Offender Review, see CEO 16-13.

13. CEO 13-23 found that a former legislator was prohibited for two years from asking legislative officials to designate legal services plans as available employee benefits to enable him to market the plans to legislative employees.

14. F.S. 112.313(9)(a)3.b. (new via Chapter 2013-36, L.O.F.) prohibits former Legislators from acting as a lobbyist for compensation before an executive branch agency, agency official, or employee for two years following vacation of office. CEO 13-23.

15. CEO 17-08 addressed the particular work history of a former chief of staff of the Department of Management Services (DMS), under F.S. 112.313(9)(a)4 and other
provisions of the Code of Ethics. See CEO 17-14 regarding a particular former employee of the Department of Business and Professional Regulation. CEO 17-17 addressed a former Department of Environmental Protection employee with a particular work history.

B. Persons who have been elected (not appointed, CEO 07-19, note 3) to any county, municipal, school district, or special district office are prohibited by F.S. 112.313(14) from representing another person or entity for compensation before the government body or agency of which they were an officer for a two-year period after leaving office. For the statute to apply, one must have been elected to office, not merely appointed to an elective office. CEO 09-16. Was found to be applicable to representations before the former governing body, before individual members of the former governing body, and before aides to members; but not to representations before other boards of the political subdivision that are not the "governing body" or "part of the governing body." CEO 05-4. However, F.S. 112.313(14), as amended by Section 2, Chapter 2006-275, L.O.F., now defines "government body or agency," differently for various local governments. As a result, a former county commissioner is prohibited for two years after he leaves office from representing a client for compensation before the county commission collegially, or its individual members, as well as the commissioners' aides and others. "Representation" includes mere physical attendance at a county commission meeting or workshop, even if the former county commissioner does not directly address the commission. CEO 06-22. A former county commissioner is not prohibited from merely attending, in behalf of a client for compensation, gatherings which are not regular meetings of the county commission and which are not advertised or noticed under the Sunshine Law; however, the former county commissioner is prohibited from making comments in behalf of a client at such a gathering if a county commissioner or one or more enumerated county employees is present. CEO 07-6. Also, see CEO 09-20. In CEO 12-3, F.S. 112.316 was applied to negate the prohibition as to a former school board member representing a school district direct support organization, the Commission on Ethics finding a unity of interest. CEO 13-10 found that the prohibition restricted a former school board member's representation of his own company before his former school district. See CEO 16-15 regarding a former county commissioner engaging in various activities, including activities involving her LLC and its clients, within two years of vacating her public position.

C. At the option of the local governing body through ordinance or resolution, appointed county, municipal, school district, and special district officers and employees of these entities may be subjected to a similar two-year prohibition, except for collective bargaining matters, under F.S. 112.313(13). However, if enacted, such an ordinance or resolution is not within the jurisdiction of the Commission on Ethics and a violation of it would not constitute a violation of the State Code of Ethics (CEO 07-19).

D. See Chapter 2016-263, Section 18, L.O.F., for an additional prohibition regarding former officials of the City of Webster.

XVIII. ADDITIONAL RESTRICTIONS (STATE-LEVEL EMPLOYEES; LEGISLATORS)

A. F.S. 112.3185(2) prohibits certain public employees who have a role in the procurement of "contractual services" (as set forth in Chapter 287) from simultaneously being an employee of a public agency and an employee of a person contracting with the agency.

B. F.S. 112.3185(3) contains a restriction, unlimited in duration (CEO 11-24, note 6), on former public employees holding employment or a contractual relationship with a business
entity in connection with any contract in which the employee participated personally and substantially [see CEO 02-17, CEO 03-8 (former State Technology Office employees), CEO 05-9 (former Department of Juvenile Justice employee), and CEO 08-17 (former FDOT employee) regarding "substantial"] through decision, approval, disapproval, recommendation, rendering of advice, or investigation (activities concerning development or procurement of a contract, CEO 83-8, CEO 06-3, CEO 11-20). Also, see CEO 11-20 (former FDOT intelligent transportation system project manager) regarding "substantial," in a very specific context; and see CEO 12-5. Does not apply to work for a governmental entity (CEO 88-32); applies only to employment/contractual relationship "in connection with" the contract (CEO 01-6, CEO 09-11); and can apply to contracts coming into existence before or after one leaves public employment (CEO 00-6; CEO 11-20; CEO 11-24, note 6). Along with F.S. 112.3185(4), has been found not to be violated in a specific situation due to the application of F.S. 112.316 (CEO 05-16); see also CEO 05-19. The public employee's public agency duties must have concerned a particular contract between the agency and the business entity in order for a violation to exist; mere participation in an entire program or subject matter (without participation as to the particular contract) will not violate the statute (CEO 06-3, note 6). The restriction cannot be avoided by employment with a different company than the company contracting with one's former public agency (e.g., cannot be avoided via subcontracting), if one's actual post-public-employment (private) work is in connection with the contract (CEO 07-16, note 3). CEO 17-06 found the statute not to apply in the context of a certain Space Florida contract. See CEO 17-08 regarding a former chief of staff of the Department of Management Services (DMS). CEO 17-09 concerned a former Chief Inspector General in the Executive Office of the Governor. However, when the agency employee's position is eliminated and his or her duties are performed by the business entity, this subsection does not prohibit him or her from employment or contractual relationship with the business entity if the employee's participation in the contract was limited to recommendation, rendering of advice, or investigation and if the agency head determines that the best interests of the state will be served thereby and provides prior written approval for the particular employee.

C. F.S. 112.3185(4) is a two-year restriction on former public employees holding employment or a contractual relationship with any business entity in connection with any contract for "contractual services" which was within the employee's responsibility. But see CEO 01-5 (former DBPR employee "outsourcing" with DBPR) and B above. "Within responsibility" is not mere incidental contact with the contract (CEO 93-2, CEO 06-3). However, "within responsibility" includes situations in which one is the supervisor of another who actually participates (for example, who actually monitors/manages) regarding a contract (CEO 07-16, CEO 01-6); also, see CEO 08-17 and CEO 11-24. Depending on particular facts, restriction can be negated by F.S. 112.316, Florida Statutes (CEO 07-16; and CEO 12-20, in a particular circumstance regarding one who was in the chain of supervision of actual monitors/managers). Unlike F.S. 112.3185(3), cannot apply to contract not in existence until after employee leaves public employment (CEO 84-30, CEO 00-6, CEO 02-17, CEO 03-8, CEO 11-20, CEO 11-24). "Contractual services" are defined as set forth in F.S. Chapter 287. CEO 06-3; F.S. 112.3185(1)(a). The restriction cannot be avoided by employment with a different company than the company contracting with one's former public agency (e.g., cannot be avoided via subcontracting), if one's actual post-public-employment (private) work is in connection with the contract (CEO 07-16, note 3; CEO 11-24). But, the prohibition is specific to particular contracts; it does not encompass entire programs or subject matters. CEO 11-24. However, if the agency employee's position is eliminated and his or her duties are performed by the business entity, this subsection may be
waived by the agency head through prior written approval for a particular employee if the agency head determines that the best interests of the state will be served thereby. CEO 11-24, note 7. As to the mechanics of waiver in a certain context, see CEO 14-22 (former State University employee). Was found to be inapplicable to purchases from, as opposed to purchases by, the Florida Lottery. CEO 13-8. CEO 15-15 concerned a former DCF contract manager accepting employment with a managing care entity; and see CEO 16-6 (not applying F.S. 112.316 to negate conflict in a given situation). CEO 17-06 found that a certain Space Florida contract did not involve "contractual services." See CEO 17-08 regarding a former chief of staff of the Department of Management Services (DMS).

D. F.S. 112.3185(5) caps the amount of money (at the amount of annual salary at severance from public employment) a former public employee can be paid by his or her former agency for "contractual services" provided to the agency during the first year after the employee vacates his or her public employment; and the gross amount paid, rather than the net received, is the measure (CEO 08-14). This prohibition may be waived by the agency head for a particular contract, upon a time/cost savings to the State determination by the head. CEO 01-5. Applies to situations where a former employee (personally or through a closely-held entity) contracts with his or her former agency; does not apply to situations where one works arms length for a business entity contracting with his or her former agency [this is the type of situation addressed by F.S. 112.3185 (3) & (4)]; see CEO 93-2 and CEO 00-6. If former public employee is employed at arm's length by a bona fide company (rather than being employed by his or her former public agency or by a sham/straw man company), the prohibition does not apply, regardless of the amount of money paid to the former public employee by the bona fide company. CEO 05-13; CEO 08-17; CEO 11-24.

E. F.S. 112.3185(6) contains a prohibition similar to that contained in F.S. 112.313(3). However, the prohibition is broader in that it applies in part to an employee's "relative," as defined in F.S. 112.312(21), and not just to an employee's spouse or child. The prohibition does not apply to local government officials. CEO 11-04, note 1.

F. Regarding F.S. 112.3185, see, for example, CEO 86-21 (former FDOT attorney, note that definition of "contractual services" has changed since opinion issued); CEO 87-8 (former FDOT engineer); CEO 93-2 (former FDOT public transit specialist); CEO 00-1; CEO 00-6 (FDOT selected exempt service employee); and CEO 01-5 (former DBPR employee "outsourcing" with DBPR). CEO 18-01 found that none of F.S. 112.3185 applies to a former employee of the Florida Housing Finance Corporation.

G. "Agency" is specially defined within the statute; but "employee" has its usual and ordinary meaning. CEO 12-5, note 2. As to an application of F.S. 112.3185 to former State University employees, see CEO 88-12 and CEO 08-14.

H. Also, Article II, Section 8(e), Florida Constitution, and F.S. 112.313(9)(a)3 contain term-of-office representation prohibitions for legislators. They apply to representation before State-level (not local) agencies. CEO 03-11; CEO 09-8; CEO 09-13. See CEO 13-4 as to State Universities, but not State Colleges or Community Colleges, being "state agencies." Exempt from the prohibitions are representations before judicial tribunals involving State agencies; but note that formal administrative proceedings pursuant to F.S. Chapter 120 (DOAH hearing officer/ALJ proceedings) have not been found to be within the "judicial tribunal" exemption. CEO 91-54, CEO 84-6, CEO 78-2. In CEO 11-3, the Commission found that a State Representative would not be personally "representing" another person or entity for compensation before a State agency when negotiating with a law firm to extend a contract for his expert witness services, when acting as an
expert witness in fulfillment of the contract and testifying in court, or when consulting with counsel or communicating with agents and employees of the Department of Financial Services, where the law firm represented the Department in litigation.

XIX. VOTING CONFLICTS OF INTEREST

A. A voting conflict arises when the official is called upon to vote on:

any measure which would inure to the officer's special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom the officer is retained or to the parent organization or subsidiary of a corporate principal by which the officer is retained; or which the officer knows would inure to the special private gain or loss of a relative or business associate of the public officer . . . .

F.S. 112.3143.

Note: gain or loss to an entity (for example, a corporation) in which a natural person owns a substantial interest necessarily constitutes gain or loss to the natural person. CEO 90-54, Question 2; CEO 06-20, note 6; CEO 08-7, Question 1. Similarly, see CEO 10-6 regarding family/closely-held entities. F.S. 112.3143(1)(d) defines "special private gain or loss" to mean "an economic benefit or harm . . . ."; e.g., an effect on one's kayak rental business (CEO 16-2).

1. A "principal by whom the officer is retained" includes: the officer's employer (CEO 78-27); clients of one's multi-discipline planning/development firm (CEO 11-6); a client of the officer's legal, accounting, or other professional practice (CEO 84-11, CEO 84-1, CEO 76-107, CEO 78-59, CEO 79-2, CEO 85-14, CEO 08-7, Question 1, CEO 11-6, CEO 11-15; but see CEO 03-7 regarding an "of counsel" relationship); a corporation for which the officer serves as a compensated director (CEO 84-107); and clients of an official who is an insurance agent (CEO 94-10)—but, compare CEO 09-19. However, a non-lawyer employee of a law/lobbying firm was not found to be retained by clients of the firm other than her clients, although she would be retained by the firm (CEO 08-13). A corporation which wholly owns a corporation which wholly owns another corporation which employs a city council member is a parent organization of a corporate principal by whom the council member is retained (CEO 03-13). Depending on the facts of a given situation, persons or entities other than the person or entity who signs one's paycheck can also be one's employer or principal. CEO 06-21; In re Irving Ellsworth. Comm. on Ethics Compl. No. 02-108 (final order 06-024), affirmed, per curiam, as Ellsworth v. Commission on Ethics, 944 So. 2d 359; and CEO 09-2. Note that the principal-agent relationship must exist at the time of the vote; the voting conflicts law addresses present (not past or possible future) employment. CEO 06-5, CEO 09-9. F.S. 112.3143 now defines, via Chapter 2013-36, L.O.F., "principal by whom retained." The definition mirrors the Commission's decisional history.

2. Situations where the person or entity in question has not been found to be a "principal by whom the officer is retained" include: the officer's church (CEO 90-24); the officer's landlord (CEO 87-86, CEO 08-12); a homeowner's association of which the officer is a member (CEO 84-80); a non-profit corporation of which the officer is an uncompensated director (CEO
84-50; CEO 08-4, Question 4; CEO 09-7; CEO 10-2); an economic development council (EDC) of which one is an uncompensated board member (CEO 14-11, CEO 14-12); a charter school of which one is an uncompensated board member (CEO 11-23); a hospital where the officer is on the medical staff (CEO 84-3, CEO 02-16); customers of the officer's retail store (CEO 76-209); a person with whom the officer merely holds a contractual relationship (CEO 08-1); a fire department from which a city commissioner does not receive funds and for which he is not an officer or director (CEO 08-22); a developer for whom an insurance broker previously obtained a policy (CEO 09-19); and a principal of an officer's spouse or other relative (CEO 11-4, CEO 11-8)—but see the discussion below regarding votes affecting an officer's relatives.

3. One's "relative" is defined to include only one's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. F.S. 112.3143(1)(c). However, in CEO 10-6, notwithstanding that "brother-in-law" is not included in the definition, a voting conflict was found because the vote/measure affecting the brother-in-law of a mosquito district commissioner also affected the commissioner's "sister" (a relationship within the definition), due to the sister and her husband (the brother-in-law) sharing a household and living expenses. Note that a measure affecting a public officer's relative's private firm (e.g., an officer's husband's employer) or its clients can, but does not necessarily, inure to the special private gain or loss of the relative. CEO 07-5, CEO 08-30, CEO 11-4 (county commissioner's son-in-law non-equity shareholder in law firm when county commission voting on land use matter in which firm is representing the property owner), CEO 11-8 (city commissioners voting on contract where bidders employ their sons), CEO 11-16, note 3 (planning commissioner's wife employed by city development corporation); CEO 12-11 (city councilmember voting on proposal for city contract for law enforcement services with sheriff's office where councilmember's father is employee of sheriff's office).

4. "Business associate" is defined to mean "any person or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate as a partner, joint venture, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property." F.S. 112.312(4). In order for persons to be "business associates" they must be engaged in a common business undertaking (a "business enterprise"); it is not sufficient that they merely hold a nominal status in relation to one another; see CEO 98-9 in which the Commission found that common ownership of a houseboat used for recreational (not commercial) purposes (even via ownership of shares of stock of a for-profit corporation holding title to the houseboat) did not make the owners business associates of one another. Also, see CEO 01-17 (county commissioner member of educational/networking forum not a business associate of other forum members by virtue of forum membership). In CEO 08-4, it was determined that other directors of a bank's board of directors are not, by virtue of being directors, business associates of a county commissioner/bank director. CEO 14-14 found that persons who both own stock (not listed on any national or regional exchange) in a bank's holding company are business associates. In CEO 08-12, a residential landlord and tenant were not found to be business associates via the rental. CEO 09-2 did not determine that persons who merely held responsibilities for a corporation were business associates; and see CEO 09-12. Note that the definition has been found to require a present, not a past or possible future, relationship (CEO 09-12). CEO 15-12 found that a mayor/commissioner and a person or entity from whom he purchased personal website hosting and management were not business associates.

5. A "public officer" is any person elected or appointed to hold office in an agency, including persons serving on an "advisory body." F.S. 112.3143(1)(b). Note F.S.
1002.33(26), subjecting board members of "private" charter schools to F.S. 112.3143; F.S. 288.901(1)(c), regarding the board of directors of Enterprise Florida, Inc.; F.S. 445.007, regarding regional workforce boards; F.S. 627.311(5)(m), regarding joint underwriters and joint reinsurers; and F.S. 627.351(6), regarding Citizens Property Insurance Corporation.

6. Note that members of school boards are subject to the voting conflicts law (F.S. 112.3143) regarding measures which would inure to the special private gain or loss of their relatives (e.g., measures to hire their relatives to school positions), even though the anti-nepotism law (F.S. 112.3135), as opposed to F.S. 1012.23(2), is not applicable to school boards and school districts. CEO 87-50, AGO 72-72, AGO 82-48.

B. Voting Conflict Duties of State Public Officers

1. Via Chapter 2013-36, L.O.F., effective May 1, 2013, State-level public officers are prohibited from voting on any matter that the officer knows would inure to his or her special private gain or loss. The new law also changes disclosure and filing requirements for State-level public officers. See CE Form 8A (the version incorporating the specifics of the new law). Also, Legislators have a choice of forms for the required disclosures. Further, under the new law, if disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of the voting conflicts law by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict. Similar to appointed local officers, appointed State officers also have requirements regarding "participation" in certain matters that are not applicable to elected officers. In CEO 11-12 (see note 8), the Commission found that an appointed governing board member of a utility authority was subject to the "participation" limitations of F.S. 112.3143(4) regarding matters of the authority, notwithstanding that he was a nonvoting member of the board. See F.S. 288.92, as amended by Chapter 2014-183, L.O.F., regarding the members of the board of directors of the Florida Tourism Industry Marketing Corporation. Also, see F.S. 310.151(1)(c) regarding participation by members of the Pilotage Rate Review Committee. And see F.S. 627.351(6)(d)3 regarding Citizens Insurance board members. CEO 17-07 found that members of the Board of Directors of the Florida Housing Finance Corporation are not "state public officers" subject to the voting conflicts law of F.S. 112.3143, even though F.S. 112.313 is applicable. A member of the Board of Governors of the State University System is a "state public officer." CEO 17-12.

C. Voting Conflict Duties of Local Public Officers

1. If there is a voting conflict under the terms of the statute, a local official holding an elective position must:

a. Abstain from voting on the measure;

b. Before the vote, publicly state to the assembly the nature of his or her interest in the matter; and

c. Within 15 days of the vote, file a memorandum of voting conflict (Commission Form 8B) with the person responsible for recording the minutes of the meeting, who incorporates the form in the minutes.

d. However, as with State-level officers who are attorneys (see, above), local officers have an alternative method of disclosure. F.S. 112.3143(5), as amended by Chapter 2013-36, L.O.F.

[Note that elected officials are not subject to the same limitation on their ability to "participate" in the matter as appointed officials; and note that one appointed to fill a position normally filled by election is not an appointed official (CEO 87-14, CEO 09-9). "Participate" is defined in F.S. 5.42]
112.3143(4)(c) to mean "any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction." In CEO 11-12 (see note 8), the Commission found that an appointed governing board member of a utility authority was subject to the "participation" limitations of F.S. 112.3143(4) regarding matters of the authority, notwithstanding that he was a nonvoting member of the board. Also, note that the voting conflicts law itself (as opposed to possible quasi-judicial/due process concerns) does not require full or complete "recusal." CEO 11-9.]

2. Local officials holding appointive positions must follow more complex guidelines. If they do not intend to "participate" in the measure, they follow the same procedures as elected officials: make the oral declaration, abstain, and follow up with the written form within 15 days. If they do intend to "participate," they must abstain but must make their disclosure before they participate. This is accomplished by either:

a. Filing the memorandum of voting conflict (Form 8B) prior to the meeting, in which case the memorandum is to be provided immediately to the other members of the agency and is to be read publicly at the next meeting after its filing; or

b. If the disclosure has not been made prior to the meeting at which the measure will be considered or the conflict was unknown prior to the meeting, making the disclosure orally at the meeting before "participating," followed by the written memorandum (Form 8B) within 15 days after the oral disclosure, which would be provided immediately to the other members of the agency and be read at the next meeting after its filing.

c. Also, see F.S. 445.007 regarding local workforce development boards.

d. See Chapter 2016-263, Section 18, L.O.F., regarding officials and employees of the City of Webster.

D. Special Private Gain or Loss--Size of the Class of Persons Affected

1. Obviously, a measure to reduce taxes would inure to the private gain of each taxpayer, including the public officials who are to vote on the proposal. The Commission has recognized that the concept of "special" gain can relate to the number of persons affected, stating:

Whether a measure inures to the special private gain of an officer or his principal will turn in part on the size of the class of persons who stand to benefit from the measure. Where the class of persons is large, a special gain will result only if there are circumstances unique to the officer or principal under which he stands to gain more than the other members of the class. Where the class of persons benefiting from the measure is extremely small, the possibility of special gain is much more likely. [CEO 77-129.]

2. On the one hand, where the official would be the only beneficiary of the measure, there clearly would be "special" gain. See CEO 89-16 (citizen advisory task force member prohibited from voting to recommend the approval of his own application to receive community development block grant funds).

3. On the other hand, the Commission advised that a city council member would not be prohibited from voting on a proposed sign ordinance where the council member owned a commercial art shop that produced signs, among other products, and other members who
owned an advertising business that recommended and purchased billboard space for its clients and who owned an electrical contracting company that had contracted to do work for a sign company also could vote on the ordinance. As the ordinance would have only an indirect effect on the council members' businesses and there was no indication that the members would be affected by the ordinance to a significantly greater or lesser degree than other affected businesses, the Commission concluded that the ordinance would not inure to the "special" gain of the members. (CEO 86-59)

4. Subsequent decisions by the Commission indicate that the threshold for "special gain" occurs when the official constitutes around 1-2% of the size of the class of persons affected. The Commission has concluded that a vote on an ordinance limiting the number of wrecker businesses on a city wrecker rotation list from 18 to 11 violated the statute when the city councilman worked for one of the 11 wrecker companies. In re Thomas R. Tona, 13 FALR 1845 (Fla. Comm. on Ethics 1989). Similarly, the Commission concluded that a county commissioner had been prohibited from voting to pave the road to his residence, where his was one of 13 residences on the paved portion and he owned the majority of the land abutting one side of the paved portion of the road. In re T. Butler Walker, Comm. on Ethics Compl. No. 92-30 (1994).

5. In groups of a larger size, the Commission advised in CEO 93-10 that a town council member was prohibited from voting on a measure to resolve a real property ownership dispute between the town and 43 private property owners, including the council member; see also CEO 04-10 (measure affecting 55 employees one of whom is relative of public officer requires abstention). In CEO 90-64, the Commission concluded that a city commissioner was prohibited from voting on a renovation project that would benefit property in which he owned an interest, where part of the cost of the project would be assessed against the property owners. There, the commissioner owned 50% of one of 55 parcels that would be affected, the parcels were owned by over 40 persons or entities, and the property's frontage was 2.7% of the total frontage upon which the assessment would be based. In CEO 92-37, the Commission advised that a city commissioner would be prohibited from voting on a measure to add to a local historic preservation district an area that included five hotel or apartment buildings owned by closely-held corporations that were owned by him and his relatives. There, the buildings constituted either 5 of 60 sites to be included or 5 of 168 sites to be included, depending on how the measure was framed. In CEO 95-4, the Commission advised that a county planning commissioner would be prohibited from voting on a comprehensive plan amendment affecting the designation of 1,200 acres of property owned by the planning commissioner, his relatives, and his business associates, where the measure would have affected a total of approximately 32,000 acres.

6. A series of other opinions involve situations where the class of persons affected was sufficiently large that no "special" gain was deemed to occur. In CEO 90-55, the Commission advised that a city mayor was not required to abstain from voting on measures involving the proposed expansion and renovation of a private club of 2,000 members. In CEO 87-18, the Commission concluded that a planning commissioner was not required to abstain from voting on a comprehensive plan amendment that would have affected 29,000 acres because his principal was leasing 300 acres of the affected area. In CEO 90-71, the Commission advised that a town commissioner was not prohibited from voting on issues relating to a project that would benefit his neighborhood and that would be assessed against the property owners in the neighborhood, when the commissioner owned 1.2% of the 83 lots that would be included in the assessment. Also, see CEO 99-12 (regarding an airport authority commissioner), CEO 00-13 (regarding a city commissioner receiving and voting on pension benefits), CEO 11-01 (city
councilmember voting on collective bargaining measures affecting her police officer-husband), CEO 06-20 (regarding a county commissioner voting on measures concerning a proposed judicial complex near her properties), and CEO 07-22 (county commissioner voting on matter affecting developers including homebuilder spouse). But see CEO 06-21 (no special private gain where each of a town's residents was similarly impacted by a rezoning vote, notwithstanding the small number of town residents) and CEO 07-17 (no special private gain where votes will impact virtually all of a town's residents similarly). CEO 10-2 found no special private gain or loss to a county commissioner's husband who was one of many healthcare providers who would be similarly affected by a measure regarding a healthcare information network. See CEO 12-6 regarding a city councilmember receiving pension benefits as a former city firefighter voting on an increase in benefits. CEO 13-20 found no voting conflict where a mayor voted on de-annexation from a town's boundaries the part of a subdivision (108 lots/85 homes) where he resided. CEO 14-19 found a sufficiently large class to negate a voting conflict regarding the siting of a baseball stadium.

7. Other decisions involve officials whose interests are proportionately large, when compared to the other members of the class of persons affected. For example, in one case the Commission concluded that a county commissioner should not have voted on the extension of a road along a boundary of her property, where the commissioner owned 260 acres, was one of 32 property owners along the proposed road extension, and was the fifth largest land owner along the road extension, with the next largest land owner having 20 acres. In re Jeanne McElmurray, Comm. on Ethics Compl. Nos. 87-24 & 26 (Stipulated Final Order 1988).

8. Budgets and appropriations acts are another type of measure that have a broad impact, but that may, in one aspect (e.g., line item), inure to the gain or loss of the voting official or the official's employer/principal. CEO 15-01 (Question 2) found a voting conflict in such a situation, receding from several CEOs. See CEO 16-9 regarding votes/measures where the funding of an applicant may affect the availability of funding for other applicants.

9. A vote/measure of a SAC (school advisory council) to award "A plus" school recognition moneys to teachers/staff of the school, including teacher/staff members of the SAC, was not found to involve "special" gain or loss, notwithstanding the number of persons affected by the vote/measure, provided the vote/measure did not address a particular person/customized amount. CEO 10-21.

10. The statute now defines, via Chapter 2013-36, L.O.F., "special private gain or loss." The definition is consistent with the Commission's decisional history, but makes it clear that gain or loss must be of an "economic" nature.

E. Special Private Gain or Loss--Remote or Speculative

1. In some situations the Commission has concluded that any gain or loss resulting from the measure would be so remote or speculative that it could not be said to inure to the official's special gain or loss. In CEO 85-46, the Commission advised that a city commissioner could vote on a petition for annexation of property, where the commissioner's employer had sold the property, retained a mortgage, and also owned adjoining property; see also CEO 09-14 (county purchase of airport buffer where mortgage retained). In CEO 93-4, a city commissioner was advised that he could vote on rent increases for a mobile home park owned by the city and located near a proposed recreational vehicle park he owned, because the possibility that he could in the future justify charging higher rent for his park if the city's park had higher rent was too speculative to conclude that the rent increases would inure to his special gain. See also CEO 05-2 (village affordable housing committee member owner of mobile home park and voting on mobile home
park measures), CEO 05-3 (county commissioner and relatives owning interest in parcels of land near proposed road), CEO 05-17 (airport authority member voting on matters concerning road project near her business), and CEO 09-7, note 7, (county commissioner voting to fund EDC where his corporate cash pay-out tied to land sale). In CEO 88-27, the Commission concluded that a city commissioner was not prohibited from voting on the rezoning of property that was being sold contingent upon rezoning, where the commissioner supported another group that was interested in purchasing the same property and the commissioner probably would have been the building contractor for that group in the event the group were to purchase the property. There, the Commission reasoned that the failure of the rezoning measure would not be the only contingency that would have to occur for the commissioner to benefit from the development of the property, as the existing owner would have to agree to sell to the group. However, the Commission noted, if the property were sold to the group, the commissioner could not vote on matters affecting the development of the property so long as he were the contractor for the development. See also CEO 00-8 and CEO 01-18. In CEO 07-14 and CEO 07-15 (identical opinions issued to two city commissioners), the Commission found that any gain or loss would be remote or speculative regarding measures to hire or dismiss city attorneys who might counsel city conduct regarding lawsuits to which the city was a party and to which the commissioners were nominal, private-capacity parties; and also found that city measures to continue or settle the lawsuits, or measures to repeal the ordinance underlying the litigation, would not cause gain or loss to the commissioners, inasmuch as they were nominal parties not personally responsible for paying for the litigation. In CEO 10-8, a mayor was not found to have a voting conflict regarding measures concerning a commuter rail station in his city, where he was employed by a hospital corporation whose interests in a neighboring city were tied to commuter rail. See CEO 13-9 finding that a county commissioner was not prohibited from voting on the sheriff's budget where the commissioner's brother was a deputy sheriff applicant.

2. Several Commission opinions have involved the impact of nearby development on a business owned by the voting official or employing the official—all of these have concluded that any gain resulting from the development was too remote and speculative to inure to the special gain of the official or employer. See CEO 85-77, CEO 85-87, CEO 86-44, CEO 89-32, CEO 91-70, CEO 06-8, and CEO 06-20; however, compare CEO 01-8. Later, under the particular facts of CEO 08-1, a city's relinquishment of an outfall (drainage) easement burdening property of a developer upstream from a city councilman's property was found not to create a voting conflict. CEO 14-03 found that a county commissioner was not presented with a voting conflict regarding measures to amend or approve a management agreement and a purchase and sale agreement for a county-owned airport adjacent to his property, determining any gain or loss to be remote and speculative; note, however, that the situation involved an existing airport, not the locating of an airport where no airport existed. CEO 14-19 found that gain or loss from the siting of a baseball stadium near already-developed property of a city commissioner would be remote and speculative.

3. Not every instance of indirect gain has been classified as too remote and speculative to constitute "special gain," however. In CEO 88-27, the Commission advised that a city commissioner should abstain from voting on the rezoning of property where his employer had contracted to purchase the property contingent upon its receiving a particular zoning designation from the city. In CEO 93-29, the Commission concluded that a city commissioner would be prohibited from voting on matters involving the city's proposed purchase of property where the commissioner and his son owned interests in the mortgage encumbering the property. The
Commission also has found a violation where a city/county planning commissioner voted to rezone a parcel of property to permit a higher density, when the commissioner had assigned his contract to purchase the property to the rezoning applicant and he was owed $10,000 by the applicant as part of the assignment. In re John S. Mooshie, 15 FALR 382 (1992), affirmed, per curiam, as Mooshie v. State Commission on Ethics, 629 So. 2d 138 (Fla. 1st DCA 1993). Voting on altering the language of a funding agreement has been found not to be remote or speculative as to gain or loss, where the public officer privately was involved in seeking funding from the program; but voting on the membership of the program's advisory board was found to present no voting conflict. CEO 13-19.

4. In some situations, a series of decisions are made, some of which would inure to the special gain of the official and others of which would not, depending on the circumstances and the extent of the official's private participation in the process. Construction projects provide a good example of this. In CEO 89-45, the Commission considered a situation where a city commissioner owned a steel company that designed and bid steel packages to general contractors and developers, who generally would appear before the city commission prior to the commissioner's having submitted a bid on the proposed project. The Commission advised that if the commissioner had not submitted a proposal at the time of the vote, then any perceived gain to him would be too speculative to require him to abstain. However, if the commissioner had contacted or was in the process of negotiating with the contractor or developer, but had not yet submitted a proposal, then he would be required to abstain. See also CEO 11-18. But see CEO 07-7, in which a city councilman whose company was a supplier of a local manufacturer of fire trucks was not presented with a voting conflict regarding a measure to provide financial incentives to the manufacturer in an effort to keep the manufacturer from relocating. See also CEO 00-5 (effect of transient rental ordinance on a grocery store not remote and speculative). Citing the remote and speculative nature of any gain or loss, the Commission determined that no voting conflict would be created were a city commissioner to vote on a measure to amend the city's affordable (work force) housing ordinance, where one of the commissioner's private legal clients was a potential developer of affordable housing within the city. CEO 05-15. Also, see CEO 12-19 regarding voting on recommendations concerning expansion of alcohol sales. And see CEO 06-21 (regarding Town of Marineland). In CEO 12-1, any gain or loss to businesses owned by city commissioners and frequented by cruise ship passengers due to a city commission vote/measure to seek a ship channel-widening feasibility study was found to be remote and speculative. In CEO 12-3, the Commission found that a school board member was presented with a voting conflict regarding a measure which would select her for or eliminate her from a position of employment to begin after she left the school board.

5. The new statutory definition of "special private gain or loss" also recognizes that the uncertain, or remote and speculative, nature of a given measure/vote is important under the voting conflicts law.

F. Special Private Gain or Loss--Procedural or Preliminary Issues

1. Some measures are simply procedural or preliminary to the later actions that would result in actual gain or loss, and therefore do not present voting conflicts for officials who would have voting conflicts if called to vote on more substantive measures concerning the same subject. See CEO 78-74 (removing item from consent agenda, to enable it to be discussed). However, in CEO 93-10 the Commission concluded that a town council member who was prohibited from voting on a measure to resolve a real property ownership dispute between the town and private property owners, including the council member, also would be prohibited from voting
on a measure to order a survey regarding the disputed property. The Commission reasoned that, since the dispute could not be resolved without a survey being done and the resolution of the dispute would inure to the special gain of the council member, the decision not to order a survey would effectively preclude the resolution of the dispute. Therefore, ordering a survey of the disputed property would not simply be preliminary to an issue where gain or loss could occur.

G. Exceptions to the Voting Conflict Rules

1. When the principal retaining the official is a public agency, the Commission has concluded that the official is not prohibited from voting on a measure inuring to the special gain of the agency and is not required to make any specific disclosures. CEO 86-86, CEO 88-20, CEO 91-20, CEO 15-8. See F.S. 112.312(2) for the definition of "agency." CEO 13-22 found the Florida Virtual School to be an "agency."

2. Commissioners of community redevelopment agencies created or designated pursuant to F.S. 163.356 or 163.357, as well as officers of independent special tax districts elected on a one-acre, one-vote basis, are not prohibited from voting. F.S. 112.3143(3)(b). CEO 12-7. In CEO 86-13 and CEO 10-24, the Commission advised that a CRA official may vote on matters affecting his or her interests but still would be required to publicly announce the conflict and file a voting conflict memorandum; similarly, see CEO 87-66, regarding a community development district supervisor elected on a one-acre, one-vote basis. And see F.S. 163.367(2), a provision outside the Code of Ethics, which independently requires certain disclosures by CRA officials, commissioners, and employees.

3. Public officers are not prohibited from voting on matters affecting their salary, expenses, or other compensation as a public officer, as provided by law. F.S. 112.313(5). See CEO 08-24 and CEO 08-25, regarding voting to appoint oneself to paid mayor or council office. Under the circumstances presented, CEO 14-17 found that a mayor was not prohibited from voting on an amendment to the city budget which established the salary of the mayor. Note also that this provision specifies that local government attorneys may consider matters affecting their salary, expenses, or other compensation as the local government attorney, as provided by law.

XX. FINANCIAL DISCLOSURE (FORM 6- "FULL" DISCLOSURE)

A. Who Must File? Note: See Form 6, available on the Commission's website (www.ethics.state.fl.us), for a listing of a number of persons/positions who must file; however, if one is unsure as to whether he or she must file, the Commission on Ethics should be contacted.

1. "Full" disclosure (Commission Form 6--Full and Public Disclosure of Financial Interests) is required of persons holding and seeking elective constitutional office, and is required of other public officers, candidates, and public employees as determined by law. Art. II, Sec. 8(a) and (h), Fla. Const.

B. When Is the Form Due, and Where Is It Filed?

1. Incumbents file with the Commission on Ethics in Tallahassee no later than July 1 of each year. If the form is not filed timely, the Commission sends a reminder notice,
advising of a grace period until September 1st; those who ignore the grace period will face an "automatic" $25-per-day-late fine, up to a maximum of $1,500, and may face additional penalties if an ethics complaint is filed. F.S. 112.3144(5). Willful refusal to file after receiving a maximum automatic fine could result in removal from public office or employment. Chapter 2014-183, L.O.F., amending F.S. 112.3144. Article V, Florida Constitution, judges and justices do not receive reminder notices and do not get the grace period; however, they are not subject to the statutory automatic fines (their conduct is cognizable by the Judicial Qualifications Commission).

2. Candidates must file prior to or at the time they file their qualifying papers, with the officer before whom they qualify. Plante v. Smathers, 372 So. 2d 933 (Fla. 1979); F.S. 99.061; F.S. 99.063; F.S. 105.031.

3. Persons leaving public positions must file (Commission Form 6F) within 60 days of leaving, unless within the 60-day period the person takes another position requiring full disclosure. Note that persons required to file a Form 6F must also file a Form 6 on or before July 1, if they were in office on December 31 of the year prior to the year in which their partial service necessitated the need for the Form 6F filing.

C. What Must Be Disclosed?

1. Each asset worth more than $1,000 must be described and valued [household goods and personal effects may be reported in a lump sum--see F.S. 112.3144(3)]. Art. II, Sec. 8(a) and (h), Fla. Const. The Commission has advised that an "asset" includes all forms of property interests that can be sold to be applied to the payment of one's debts. CEO 87-84 and CEO 78-1. The asset should be valued at fair market value, as of the date used for reporting one's net worth. Property owned solely by one's spouse need not be reported. CEO 77-158. However, the full value of property held in tenancy by the entirety (held as husband and wife), or otherwise held jointly with right of survivorship, must be reported. CEO 74-27. Assets held jointly, other than in tenancy by the entirety or in joint tenancy with right of survivorship, can be reported based on the percentage of value owned by the reporting person. F.S. 112.3144(4)(a). Investment products held in IRAs, 401(k)s, the Florida Retirement Investment Plan, the Florida College Prepaid Plans, and Deferred Option Retirement Accounts should be reported as assets; when funds are held in a bank, credit union, or other institutional account, the account should be identified as an asset. CEO 12-10. For disclosing real property, a street address should be used if a street address exists for the property. For disclosing a vehicle lease, see CEO 14-18.

2. Each liability worth in excess of $1,000 must be described and valued (Art. II, Sec. 8(a) and (h), Fla. Const.), except for credit card and retail installment accounts, taxes owed unless reduced to a judgment, indebtedness on a life insurance policy owed to the company of issuance, contingent liabilities, and accrued income taxes on net unrealized appreciation. F.S. 112.312(14). Valuation depends on the face amount of the debt and the basis for liability (e.g., joint or several). For disclosing a vehicle lease, see CEO 14-18. Liability for a debt that is secured by property owned by the reporting individual but that is held jointly, with right of survivorship, must be reported at 100 percent of the total amount owed. F.S. 112.3144(4)(b). Liability on a promissory note only as a guarantor (CEO 86-40) or as a partner (CEO 95-1) is contingent and not reportable. Liability as a co-maker of the note must be reported. CEO 89-5.

3. The net worth of the reporting person as of the close of the prior calendar year, or a more current date. Art. II, Sec. 8(a) and (h), Fla. Const.

4. Income reporting requirements can be satisfied in one of two ways:
   a. Attaching a complete copy of the reporting individual's most recent income tax return (including all schedules, W2s, 1099s, and attachments); or
b. Reporting the name and address, and amount, of each source of income exceeding $1,000 received during the prior year, including a statement of all "secondary sources" of income. "Secondary sources" mean each source of income exceeding 10% of the gross income of a business entity of which the reporting individual owned more than a 5% interest and from which the reporting individual received more than $1,000 of gross income. Amounts of secondary income are not disclosed. Art. II, Sec. 8(h), Fla. Const.; Commission Rule Ch. 34-8, F.A.C. As to correct reporting of "declined payment of salary," see CEO 04-8.

5. Amendments (Commission Form 6X) to full disclosure filings are allowed. However, the curative effect of an amendment can vary.

D. Form 6 filings are scanned and made publicly available through a searchable Internet database.

E. The law also provides for additional collection methods (garnishment and wage withholding) for unpaid "automatic" financial disclosure fines. The collections actions statute of limitations is 20 years.

XXI. FINANCIAL DISCLOSURE (FORM 1- "LIMITED" DISCLOSURE)

A. Who Must File? Note: Consult the Form itself, on the Commission's website (www.ethics.state.fl.us), for a listing of some persons/positions who must file; however, if one is unsure of whether he or she is required to file, the Commission on Ethics should be contacted. "State officers" (CEO 02-15, Question 2), "local officers," and "specified state employees" (for example, full-time state employees serving as counsel or assistant counsel to a state agency, a criminal conflict and civil regional counsel, and an assistant criminal conflict and civil regional counsel), as defined in F.S. 112.3145(1), are required to file the "limited" financial disclosure statements (Commission Form 1--Statement of Financial Interests). State university "grants compliance analysts" who have no authority to apply for or award grants and no authority to decide how grant funds are spent were determined not to be "grants coordinators," and thus do not have to file (CEO 10-25). Trial court staff attorneys are not required to file (CEO 03-12); but see CEO 05-12, requiring filing by various employees of the State Courts System in a Judicial Circuit. Support Enforcement Hearing Officers appointed pursuant to Rule 12.491(c), Florida Family Law Rules of Procedure are not required to file (CEO 02-18). A Regional Counsel for the Office of Criminal Conflict and Civil Regional Counsel is required to file as a "specified state employee" due to his status as a "purchasing agent" with the requisite purchasing authority. CEO 08-9. Chapter 2017-76, L.O.F., changed the filing requirement from Form 6 ("full disclosure") to Form 1 ("limited disclosure") for some members of the Florida Prepaid College Board. "Local officers" include the following:

1. Persons elected to office in any political subdivision, or appointed to fill a vacancy in such an office, except for the elected constitutional officers who file Form 6. F.S. 112.3144(2).

2. Candidates for such local offices. F.S. 112.3145(2)(a).

3. Members of various, but not all, appointed bodies. See CE Form 1, F.S. 112.3145(1)(a)2., CEO 01-11, CEO 01-20, CEO 15-10 (St. Augustine Historic Architectural Review Board), CEO 17-03 (Jacksonville Ethics Commission).

4. Certain personnel of private businesses serving as the chief administrative/executive officer of a city or other political subdivision. F.S. 112.3136. CEO 10-01.
5. Members of governing boards of charter schools operated by a city or other public entity. F.S. 1002.33(26).
6. Any 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. F.S. 112.3145(1)(a)2.
7. Persons holding any of the following positions:

   mayor; county or city manager; chief administrative employee of a county, municipality, or other political subdivision; county or municipal attorney; finance director of a county, municipality, or other political subdivision; chief county or municipal building code 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; district school superintendent (other than those superintendents who file Form 6); community college president; district medical examiner; or purchasing agent having the authority to make any purchase exceeding the amount in F.S. 287.017 CATEGORY ONE, for any political subdivision of the state or any entity thereof. F.S. 112.3145(1)(a)3.

   a. "County or municipal attorney" includes only the city or county attorney, and not assistant city or county attorneys. CEO 85-49. Includes a city attorney whose firm is retained as an independent contractor. CEO 08-27.

   b. Rather than simply reviewing an employee's title, a functional analysis of the employee's duties is required to determine if the employee is a "local officer." Thus, a city building and zoning director not having the power to grant or deny a building permit and lacking purchasing authority would not be required to file. CEO 84-61. A city public utilities department director whose responsibilities include the operation of the city's water and sewer facilities would be considered a water resources coordinator, required to file. CEO 84-70.

   c. A "purchasing agent" is defined in F.S. 112.312(20) to mean "a public officer or employee having the authority to commit the expenditure of public funds through a contract for, or the purchase of, any goods, services, or interest in real property for an agency, as opposed to the authority to request or requisition a contract or purchase by another person." Thus, this category may include a number of administrative personnel whose positions are not specified otherwise. See CEO 88-62.

   d. Members of health facilities authorities created pursuant to Chapter 154, Part III, Florida Statutes, were found not to be "local officers." CEO 03-5. Appointed and ex officio members of the Citrus Levy Marion Regional Workforce Development Board, Inc. were not found to be subject to filing financial disclosure (CEO 08-3); but see below regarding Local Workforce Development Boards.

   e. A "finance director of a county, municipality, or other political subdivision" (required to file via Chapter 2013-36, L.O.F.) was found not to include a finance director of a sheriff's office. CEO 13-17. CEO 17-11 found one position-holder in a county's government to be a "finance director" and another to not.
f. Trustees of a voluntary employees' beneficiary association were found not to be "local officers." CEO 14-25.

8. A non-voting member of a board has been found to be a "member" required to file financial disclosure (CEO 07-20), and a suspended city commissioner has been found to be required to file (CEO 10-19).

9. Members of Local Workforce Development Boards and the executive director of such Boards (or the equivalent of the executive director) must file CE Form 1, pursuant to F.S. 112.3145, unless they are required to file CE Form 6. F.S. 445.007(1).

10. Members of the Jacksonville Transportation Authority file Form 1 with the Commission on Ethics. F.S. 349.03(3)(a). Members of the Gasparilla Island Bridge Authority file Form 1 with the Commission on Ethics. Chapter 2012-242, L.O.F.

B. When Is the Form Due, and Where Is It Filed?

1. Candidates for local office must at the time they file their qualifying papers, with the officer before whom they qualify. F.S. 99.061, 112.3145(2)(a), and 112.3145(2)(c).

2. Others must file within 30 days of their appointment or employment and annually thereafter, by July 1st, with the supervisor of elections of the county where they reside (if they are not permanent residents of any county, they file where their agency is headquartered). F.S. 112.3145(2)(c). State officers and specified State employees file with the Commission on Ethics. If the form is not filed timely, a reminder notice advising of a grace period until September 1st is sent. Those who ignore the notice and grace period will face an "automatic" $25-per-day-late fine, up to a maximum of $1,500, and may face additional penalties if an ethics complaint is filed. F.S. 112.3145(7). Willful refusal to file after receiving a maximum automatic fine could result in removal from public office or employment. F.S. 112.3145, as amended by Chapter 2014-183, L.O.F.

3. The obligation to file accrues at the close of a calendar year in which the officer or employee holds his or her office or employment. However, persons who leave their office or employment must file Commission Form 1F within 60 days after leaving, unless another reporting position is taken within the 60-day period. F.S. 112.3145(2)(b). The form must be filed even if there is nothing to report. F.S. 112.3145(3). Filing of a Form 1F does not relieve the filer of the obligation to file a Form 1, if the person was in their public position for the whole of the year preceding the partial year necessitating the filing of a Form 1F.

C. What Must Be Disclosed (note that a disclosure option is now available; see D below)?

1. The Form 1 disclosure is considered "limited" disclosure, because it requires no disclosure of dollar amounts for income, assets, or liabilities. Disclosure thresholds are relative, based on percentages or comparisons, rather than based on absolute dollar amounts.

2. The "disclosure period" covered by the form is the taxable year, whether calendar or fiscal, immediately preceding the last day of the period during which the statement is required to be filed. F.S. 112.312(10).

3. All sources of income in excess of 5% of the reporting person's gross income received by the person in his or her name "or by any other person for his or her use or benefit." Public salary need not be reported, although it should be included when calculating the total amount of one's gross income; nor are sources belonging only to one's spouse or business partner to be reported. F.S. 112.3145(3)(a); CEO 75-19.

4. Secondary sources of income (major clients or customers of businesses owned by the reporting individual) must be disclosed. "Secondary sources" mean each source of
income exceeding 10% of the gross income of a business entity of which the reporting individual
owned more than a 5% interest and from which the reporting individual received more than 10% of
his or her gross income, and at least $1,500. F.S. 112.3145(3)(a)2.

5. The location or description of Florida real property, except for residences and vacation homes, in which the reporting person owns directly or indirectly more than 5% of the value of the property, must be disclosed. A street address should be used if a street address exists for the property. "Indirect" ownership includes ownership of a beneficial interest in a trust owning the property or in a corporation owning the property, but does not include ownership by a spouse or minor child. F.S. 112.312(13) and 112.3145(3)(a)3; CEO 83-3; CEO 76-162.

6. Intangible personal property worth more than 10% of the reporting individual's total assets must be reported. F.S. 112.3145(3)(a)3. Regarding reporting of funds or investment products held in IRAs and regarding reporting of other intangible personal properties, see CEO 11-11.

7. Any liability which equals more than the reporting individual's net worth must be disclosed, except for credit card and retail installment accounts, taxes owed unless reduced to a judgment, indebtedness on a life insurance policy owed to the company of issuance, contingent liabilities, and accrued income taxes on net unrealized appreciation. F.S. 112.312(14) and 112.3145(3)(a)4. Valuation depends on the face amount of the debt and the basis for liability (e.g., joint or several). Liability on a promissory note only as a guarantor (CEO 86-40) or as a partner (CEO 95-1) is contingent and not reportable. Liability as a co-maker of the note would be reportable. CEO 89-5.

8. For valuation purposes, property held by husband and wife as tenancy by the entirety should be valued at full value; other joint property should be based on the percentage of ownership. CEO 82-30. Bank accounts where each joint tenant is authorized to withdraw the full amount are valued at full value. CEO 82-30.

D. However, the following disclosure option is available under F.S. 112.3145(3)(b):

1. All sources of gross income in excess of $2,500.

2. All sources of income to a business entity in excess of 10 percent of the gross income of a business entity in which the reporting person held a material interest and from which he or she received gross income exceeding $5,000 during the disclosure period.

3. The location or description of real property in Florida, except for residences and vacation homes, owned directly or indirectly by the reporting person, when such person owns in excess of 5 percent of the value of such real property.

4. A general description of any intangible property worth in excess of $10,000. Regarding reporting of funds or investment products held in IRAs and regarding reporting of other intangible personal properties, see CEO 11-11.

5. Every liability in excess of $10,000.

E. As with Form 6, see above, Chapter 2013-36, L.O.F., provided for additional collection methods (garnishment and wage withholding) for unpaid "automatic" fines, and extended the collections actions statute of limitations to 20 years.

XXII. DISCLOSURE OF SPECIFIED BUSINESS INTERESTS
A. Persons required to file Form 6 or Form 1 who are or were during the disclosure period an officer, director, partner, proprietor, or agent (other than a resident agent solely for
service of process), or who own or owned more than a 5% interest in one of certain types of business entities, are required to disclose the fact as part of their Form 6 or Form 1 disclosures. F.S. 112.3145(6).

B. The types of businesses for which this disclosure must be made include state and federally chartered banks, state and federal savings and loan associations, cemetery companies, insurance companies, mortgage companies, credit unions, small loan companies, alcoholic beverage licensees, pari-mutuel wagering companies, utility companies, entities controlled by the PSC, and entities granted a franchise to operate by either a city or a county government. F.S. 112.312(19).

XXIII. CLIENT DISCLOSURE (QUARTERLY)

A. Who Must File?
State officers, local officers (note addition of "privatized" chief administrative officers, F.S. 112.3136), specified state employees, and elected constitutional officers are required to report, on a quarterly basis, the names of clients represented for a fee or commission before agencies at their level of government, using Commission Form 2. F.S. 112.3145(5).

B. When Is the Form Due and Where Is It Filed?
The form should be filed only when a reportable representation is made during a calendar quarter, no later than the last day of the quarter following the quarter in which the representation is made. "Local officers" file with the supervisor of elections of the county in which the officer is principally employed or is a resident. Elected constitutional officers, state officers, and specified state employees file with the Commission on Ethics. F.S. 112.3145(5).

C. What Should Be Disclosed?
1. The names of clients and the names of the agencies before which the clients were represented by the reporting individual or by any partner or associate of a professional firm of which the reporting individual is a member, when the reporting individual has actual knowledge of the representation. Depending on the substance of one's relationship to a law firm, one who is "of counsel" to a law firm may not be a "member" of the firm. CEO 74-55, CEO 92-11.
2. Although the statute requires that reportable representations be at the reporting individual's "level of government," Commission opinions have required only disclosure of representations within the political subdivision served by a given local officer. CEO 80-63, CEO 85-33.
3. Appearances in ministerial matters are not reportable. A "ministerial matter" is one involving "action that a person takes in a prescribed manner in obedience to the mandate of legal authority, without the exercise of the person's own judgment or discretion as to the propriety of the action taken." F.S. 112.312(17).
4. "Representation" includes actual physical attendance on behalf of a client in an agency proceeding, letters written or documents filed on behalf of the client, and personal communications made with the officers or employees of the agency on behalf of the client. F.S. 112.312(22).
5. Contact with staff can be a reportable representation. CEO 79-7.
6. Under F.S. 112.3145(5), the following also do not have to be reported:
   a. Appearances before any court;
   b. Appearances before compensation claims judges;
   c. Representations on behalf of one's agency in one's official capacity;
d. Preparing and filing forms and applications merely to obtain or transfer a license based on a quota, a franchise of the agency, or a license or operation permit to engage in a profession, business, or occupation, when the action does not require substantial discretion, a variance, a special consideration, or a certificate of public convenience and necessity.

XXIV.  AUTHORITY TO ADOPT MORE STRINGENT STANDARDS

Agencies, by rule, and political subdivisions, by ordinance, may adopt "additional or more stringent standards of conduct and disclosure requirements," provided that they do not otherwise conflict with the provisions of the Code of Ethics. F.S. 112.326. Counties may specify fines and jail time by ordinance. F.S. 125.69(1).

XXV.  ETHICS COMMISSION PROCESSES AND PROCEDURES

A. Commission on Ethics created in F.S. 112.320 to serve:
   1. As the guardian of the standards of conduct provided in the Code of Ethics for Public Officers and Employees (Part III, Ch. 112, F.S.); and
   2. As the independent commission provided for in Art. II, Sec. 8(f), Fla. Const., to "conduct investigations and make public reports on all complaints concerning breach of public trust by public officers or employees not within the jurisdiction of the judicial qualifications commission."

B. The Commission does so, primarily, in two ways:
   1. By rendering binding, judicially-reviewable advisory opinions [F.S. 112.322(3); relevant rules are in Ch. 34-6, Florida Administrative Code]; and
   2. By investigating complaints [F.S. 112.324; relevant rules are in Ch. 34-5, Florida Administrative Code]

C. Advisory Opinions:
   1. Standing is limited to:
      a. the person who is in doubt about the applicability of the law to himself or herself, "in a particular context" (not hypothetical); or
      b. a public officer or employee having the power to hire or terminate an employee has standing to request an opinion about how the law applies to that applicant or employee
   2. Opinion Procedure:
      a. Written request initiates the proceeding
      b. Commission staff prepares a draft opinion which is sent to the Commission and to the requestor prior to the meeting at which it will be considered
      c. Requestor can respond in writing, appear at the meeting and be heard; rendered opinions are numbered, dated and published at Commission's website (www.ethics.state.fl.us)
      d. Are analogous to declaratory statements under APA (F.S. 120.565), as they are based on the facts provided by the requestor, rather than on adjudicated facts, and are reviewable by appeal to a District Court of Appeal (F.S. 112.3241)

D. Complaints:
   1. Must be made under oath on the form prescribed by the Commission (CE Form 50); a copy must be sent by the Commission to the respondent (accused violator) within 5
days [F.S. 112.324(1)]. Note that the Code of Ethics (Part III, Chapter 112, Florida Statutes) does not expressly require anyone to file an ethics complaint; but note, also, that there may be other statutes or bases requiring a filing [for example, F.S. 1001.64(3), which authorizes community college boards of trustees to ask for investigations of actions by the college's president, and which requires referral of inspector-general-identified potential violations to the Commission on Ethics, FDLE, the Attorney General, or other appropriate authority].

2. Are confidential, unless confidentiality is waived in writing, up to the point where either the complaint is dismissed by the Commission or the Commission finds "probable cause" [F.S. 112.324(2)]

3. First stage: facial review for legal sufficiency of complaint. If Commission finds complaint to be insufficient to indicate a possible violation of the ethics laws, complaint is dismissed without investigation, but with order explaining reasoning. [Rule 34-5, F.A.C.]

4. Second stage: preliminary investigation to determine "probable cause." Commission or Executive Director orders investigation of complaint; investigator prepares written report, which is provided to the respondent, who is given time to reply. Commission "Advocate" (prosecutor) prepares written probable cause recommendation, which also is provided to the respondent, who can provide a written reply. "Probable cause" hearing before the Commission allows oral argument by the respondent and Advocate (no evidence taken) and allows the complainant to observe. If probable cause is found, Commission can order hearing or allow respondent 14 days to request a public hearing. [F.S. 112.324(3); Rule 34-5]

5. Third stage: determination of whether there was a violation. Either stipulated settlement agreement negotiated between respondent and Advocate or hearing before Division of Administrative Hearings' Administrative Law Judge. ALJ's recommended order reviewed by Commission pursuant to F.S. 120.569 and 120.57. Clear and convincing evidence standard applies to complaint proceedings. Latham v. Fla. Comm. on Ethics, 694 So. 2d 83 (Fla. 1st DCA 1997). Penalties provided for in F.S. 112.317 are imposed by disciplinary officials (typically the Governor), not by the Commission, which can only recommend penalties. Commission's final order is subject to appeal to District Court of Appeal under F.S. 112.3241 and 120.68. Orders are published on Commission's website per F.S. 120.53.

6. If a complaint is dismissed, the complainant does not have standing to appeal the Commission's decision, not being considered to be a party to the complaint proceeding. Mulgado v. Rodriguez, 933 So.2d 657 (Fla. 1st DCA 2006), and Mulgado v. Diaz, 933 So. 2d 658 (Fla. 1st DCA 2006).

7. In addition to being able to entertain a matter filed as an ethics complaint, the Commission is authorized, via Chapter 2013-36, L.O.F., to proceed on referrals of possible ethics violations, when the referral comes from the Governor, the Florida Department of Law Enforcement, a State Attorney, or a United States Attorney.

8. Also, Chapter 2014-183, L.O.F., amended F.S. 112.3144 and F.S. 112.3145 to mandate that the Commission initiate an investigation, if a person fails to file financial disclosure and accrues the maximum "automatic" fine of $1,500, for the purpose of determining whether the failure to file was willful. If willful, the Commission must recommend that the official be removed from public office or employment.

E. Composition of the Commission:
1. Nine members appointed for two-year terms
2. Five members appointed by the Governor, no more than three of whom are from the same political party, one of whom must be a former city or county official
3. Two members are appointed by the President of the Senate, and two members by the Speaker of the House of Representatives; neither the Speaker nor the President may appoint more than one member from the same political party.

4. No member may hold any public employment or be a "lobbyist" under State law or local charter or ordinance; no member may serve more than two full terms in succession. (F.S. 112.321(1))

F. Other Responsibilities of the Commission:

1. Financial disclosure -- compile a list of persons required to file financial disclosure, receive and maintain disclosure forms, and enforce the timely filing of forms by collecting automatic fines imposed by statute for late filings ($25 per day; $1,500 maximum) and by hearing appeals from the fines [F.S. 112.3144(5) and 112.3145(7)]

2. Administer and enforce the executive branch lobbyist registration and reporting law, which requires that persons register to lobby executive branch agencies and officials, and Con. Rev. Comm'n's, under certain circumstances (Legislative lobbyists are regulated by the Legislature) [F.S. 112.3215]

3. Investigate complaints alleging a violation of F.S. 11.062(2), which requires executive branch agencies, state universities, community colleges, and water management districts to lobby the legislative and executive branch only by using full-time employees.

4. Investigate suspected violations of limitations on proper use of State motor vehicles and State aircraft when reported by the CFO (F.S. 287.175)

5. Investigate complaints and render opinions concerning the ethics standards applicable to members and staff of the Public Service Commission, and to members of the Public Service Commission Nominating Council. F.S. 350.031 - .043; 350.042(7); 350.0605 (former members).

G. Representing Agency Personnel in Complaints before the Ethics Commission

1. Consider Whether a Conflict of Interest May Prohibit the Representation
   a. When an ethics complaint has been filed against an agency officer or employee, the Commission has advised that the Code of Ethics does not prohibit an agency attorney from representing the officer or employee. See CEO 76-144 and CEO 86-57.
   b. However, in at least some instances the Bar has concluded that professional ethics considerations would prohibit the agency attorney from representing the officer or employee before the Commission. See Professional Ethics of the Florida Bar Opinion 77-30, May 9, 1978 (county attorney may not represent individual county commissioner before Ethics Commission in matter involving misuse of public office).
   c. This opinion was reconsidered by the Board of Governors on Sept. 29, 2006, to clarify its views on conflicts involving a county attorney's representation of a county commissioner who is the subject of an ethics complaint. The reconsidered opinion concludes that there may be a conflict of interest under Rule 4-1.7, and that whether the conflict may be waived depends on the individual circumstances of the matter. In order to waive the conflict, both the commissioner and the county must give informed consent in writing, with the county's consent being given by someone other than the commissioner.

2. Consider the Extent to Which the Attorney Client Privilege May Apply
   a. In Re Bruce R. Lindsey, 158 F.3d 1263 (D.C. Cir. 1998):
   Government attorney-client privilege did not protect from disclosure advice which Deputy White House counsel rendered on political, strategic, or policy issues in connection with lawsuit
involving the President in his personal capacity prior to expansion of Independent Counsel's jurisdiction to investigate whether wrongdoing occurred in connection with that action. Deputy White House Counsel could not assert government attorney-client privilege to avoid responding to grand jury if he possessed information relating to possible criminal violations. Deputy White House Counsel could not withhold from grand jury information about possible criminal misconduct that he obtained in conferring with the President and the President's private counsel on matters of overlapping concern to the President personally and in his official capacity.

b. In Re A Witness Before the Special Grand Jury 2000-2, 288 F.3d 289 (7th Cir. 2002):
Attorney-client privilege did not apply to bar grand jury testimony of state government counsel as to communications with officeholder; any privilege ran to the office and not to the employees in that office, and lack of criminal liability for government agencies and duty of public lawyers to uphold the law outweighed any need for a privilege, in context of a federal criminal investigation.

c. Attorney General Opinion 97-61:
Discussions regarding school business between individual school board members and the school board attorney are not attorney-client conversations and, therefore, are not privileged communications.

A school board attorney may memorialize, in writing, any conversations with an individual school board member or the superintendent. These documents are public records subject to inspection and copying.

d. Attorney General Opinion 98-59:
Those records in the files of the city attorney which were made or received in carrying out her duties as city attorney and which communicate, perpetuate, or formalize knowledge constitute public records and are required to be turned over to her successor.

H. Attorney's Fees for Defense Against Ethics Complaint

1. Paid by the Official's Public Agency

a. An official's successful defense of misconduct charges brought in proceedings before the Ethics Commission qualifies under the common law for reimbursement by the official's agency of attorney's fees expended in that defense. (There is no statutory obligation.) Thornber v. City of Fort Walton Beach, 568 So. 2d 914, fn. 7 at p. 918 (Fla. 1990).

b. However, fees may not be awarded when the complaint arises out of a vote by the public official that directly advances the official's private pecuniary interests. Chavez v. City of Tampa, 560 So.2d 1214 (Fla. 2d DCA 1990).

c. Maloy v. Bd. of County Commissioners of Leon County, 946 So.2d 1260 (Fla. 1st DCA 2007), rev. den. 962 So. 2d 337 (Fla. 2007): Court affirmed Leon County's refusal to pay Commissioner's attorney fees for successfully defending against ethics complaint which arose out of his consensual affairs with two women, concluding that the ethics proceeding "did not arise out of and in the course of Maloy's employment with the Board while he served a public purpose."

2. Paid by the Complainant

a. A complainant who has filed an ethics complaint with malicious intent to injure the reputation of the official by filing with the knowledge that the complaint contains one or more false allegations, or with reckless disregard for whether the complaint contains false allegations, of fact material to a violation of the Code of Ethics is liable for costs and reasonable attorney's fees incurred in defending the official. (F.S. 112.317(7); Commission Rule 34-5.0291, F.A.C.)
b. Regardless of whether the official was represented by agency counsel and the official did not incur any out-of-pocket expenses, a complainant who has filed a frivolous ethics complaint with malicious intent to injure the reputation of the official is liable for reasonable costs and attorneys fees incurred in defending the official.  
Couch v. Commission on Ethics, 617 So. 2d 1119 (Fla. 5th DCA 1993).

c. The amount to be awarded includes fees and expenses incurred in proving entitlement to attorney's fees.  
Kaminsky v. Lieberman, 675 So.2d 261 (Fla. 4th DCA 1996).

d. For purposes of considering a fees award, the "complaint" filed by the complainant may include statements made by the complainant's attorney to the Commission investigator during the investigation.  
Osborne v. Commission on Ethics, 951 So.2d 25 (Fla. 5th DCA 2007), rev. dismissed sub nom Milanick v. Osborne, 962 So.2d 337 (Fla. 2007).

e. "[T]he elements of a claim by a public official for costs and attorney fees are that (1) the complaint was made with a malicious intent to injure the official's reputation; (2) the person filing the complaint knew that the statements made about the official were false or made the statements about the official with reckless disregard for the truth; and (3) the statements were material." This is not the "actual malice" standard of NY Times v. Sullivan.  
Brown v. State Commission on Ethics, et al., 969 So.2d 553 (Fla. 1st DCA 2007), pet. for rev. den. sub nom Burgess v. Brown, 980 So.2d 1070 (Fla. 2008).  "Material" means material to a violation of the Code of Ethics; allegations not material, regardless of how inflammatory, disparaging, or conclusory they may be, will not support a request for costs and fees.  
Hadeed v. Commission on Ethics, 208 So. 3d 782 (Fla. 1st DCA 2016).

f. The procedure for requesting an award of attorney's fees is set out in Commission Rule 34-5.0291, F.A.C., and contemplates the filing of a petition within 30 days of dismissal of the underlying complaint, review of the petition by Commission staff, possible dismissal after an informal hearing, and award of fees only after a formal hearing by the Division of Administrative Hearings.
What persons are governed by the ethics laws of the State of Florida?

112.313(3), Florida Statutes
Doing Business with One’s Agency
Conflicting Employment or Contractual Relationship

Section 112.313(7)(a), Florida Statutes

QUALIFIED BLIND TRUSTS

New, via Chapter 2013-36, Laws of Florida (Section 112.31425, Florida Statutes)

PROHIBITION ON EMPLOYEES HOLDING OFFICE

Section 112.313(10), Florida Statutes
DUAL PUBLIC EMPLOYMENT

Section 112.3125, Florida Statutes
New, via Chapter 2013-36, L.O.F.

LEGISLATORS REPRESENTATION DURING TERM OF OFFICE RESTRICTION

Section 112.313(9)(a)3, Florida Statutes, and Article II, Section 8(e), Florida Constitution

112.313(11), Florida Statutes

No officer, director, or administrator of a Florida state, county, or regional professional or occupational organization or association, while holding such position, shall be eligible to serve as a member of a state examining or licensing board for the profession or occupation.
BOARD OF GOVERNORS
AND BOARDS OF
TRUSTEES

No citizen member of the Board of
Governors of the State University
System, nor any citizen member of a
board of trustees of a local constituent
university, shall have or hold any
employment or contractual relationship
as a legislative lobbyist requiring
annual registration and reporting
pursuant to s. 11.045.

“Local government attorneys.”
112.313(16), Florida Statutes

Chief administrative officers of
political subdivisions
112.3136, Florida Statutes
Charter school board members/personnel
1002.33(24) & (26), Florida Statutes

Restrictions after leaving public service (revolving door controls)

• apply to some persons at both the local and state levels of government
• can last for more than two years after one leaves public service
• are codified in 112.313(8), 112.313(9), 112.313(14), and 112.3185, Florida Statutes
• New provision regarding former Legislators

112.313(8), Florida Statutes

• This statute applies to state and local officers and employees
• This statute prohibits one from disclosing or using information not available to the public for private gain
• This statute was clarified by the Legislature to make certain its applicability to situations in which the information was learned in one’s public position but not disclosed or used for private purposes until after one leaves his or her public position
112.313(9), Florida Statutes

- Lasts for 2 years after leaving public office or public employment
- Does not apply to former local government officers or employees
- Includes but is not limited to former state SES and SMS employees
- Applies to former Legislators, appointed state officers, and statewide elected officers
- Restricts the broad range of conduct defined as "representation" in 112.312(22), Florida Statutes
- New Legislator prohibition, 2013-36, L.O.F.

112.313(14), Florida Statutes

- Applies only to former elected county, municipal, special district, or school district officers
- Lasts for 2 years after vacating office
- Prohibits representation before one's former "government body or agency."
- Also, see F.S. 112.313(13), a local option

112.3185, Florida Statutes

- Additional post-employment restrictions regarding state-level employees
More stringent ethics standards

- Can be adopted at the state or local level
- Authority for them comes from 112.313(13), Florida Statutes, 112.326, Florida Statutes, and arguably from an agency’s inherent management and oversight of its employees

The End and Thank You

- If you have any questions contact Chris Anderson or others at the Commission on Ethics, (850) 488-7864; Commission on Ethics, P.O. Drawer 15709, Tallahassee, Florida 32317-5709; anderson.chris@leg.state.fl.us
(ETHICS) HARMFUL HOSPITALITY AND CORRUPTING CUPS OF COFFEE: GIFTS, HONORARIA AND MORE

By

Caroline Klancke, Tallahassee
Harmful Hospitality & Corrupting Cups of Coffee: Gifts, Honoraria, & More

PRESENTED BY
CAROLINE KLANCKE – ATTORNEY
THE FLORIDA COMMISSION ON ETHICS

We Will Discuss
- 112.313(2): Solicitation/Acceptance
- 112.313(4): Unauthorized Compensation
- 112.3148: THE Gifts Law
- 112.31485: Gifts from Political Committees
- 112.3149: Honoraria
- 112.3215: Executive Branch Expenditure Ban

Quid Pro Quo
112.313(2), F.S.
- Prohibits asking for or accepting anything of value to the recipient based on an understanding that it will influence your vote, official action, or judgment.
- Applies to all state and local public officers and employees, local gov’t attorneys, candidates.
- Involves a quid-pro-quo.
Unauthorized Compensation
112.313(4), F.S.

Prohibits an official, his spouse, or his minor child from accepting anything of value when the official knows, or under the circumstances should know, that it was given to influence a vote or other official action.

RIPEs Defined

- Reporting Individuals—include any individual required to file financial disclosure (Form 1 or Form 6).
- Procurement Employees—means any employee of the executive or legislative branch who has in the last year participated in the procurement of contractual services or commodities that exceeds or is expected to exceed $10,000.

Additional Restrictions Applicable to RIPEs

- Gifts from political committees—Section 112.31485, F.S.
- The traditional Gifts Law—Section 112.3148, F.S.
- Honoraria law & honorarium event related expenses—Section 112.3149, F.S.
- The Expenditure Ban—112.3215(6), F.S.
Restrictions on Gifts from Political Committees: 112.31485, F.S.

A RIPE, or a member of his or her immediate family, is prohibited from soliciting or knowingly accepting, directly or indirectly, a gift from a political committee.

A political committee is prohibited from giving, directly or indirectly, any gift to a RIPE or a member of his or her immediate family.

Definition of “Gift” from Political Committee

For purposes of this section, the term “gift” means any purchase, payment, distribution, loan, advance, transfer of funds, or disbursement of money or anything of value that is not primarily related to contributions, expenditures, or other political activities authorized pursuant to chapter 106.—Section 112.31485(1)(a), F.S.

Section 112.3148, F.S. The Gifts Law
THE Gifts Law: Section 112.3148, F.S.

- Applies to “reporting individuals,” state and local; and to “procurement employees” (who exist only at the state level): RIPEs.
- Solicit gifts from lobbyists, principals, vendors
- Accept gifts worth more than $100 from lobbyists, principals, vendors
  - Must report gifts worth more than $100 received from others
  - May accept gifts of any value from relatives!

Who Are “Lobbyists” and “Vendors”?

- LOBBYIST: 112.3148(2)(b) – Anyone who, for compensation, is seeking or has sought in the previous 12 months to influence the decisions of a RIPE or his or her agency.
- VENDOR: 112.3148(2)(f) -- A business entity doing business directly with an agency, such as renting, leasing, or selling any realty, goods, or services.

What is a “Gift”?  

Anything you get for which you did not give equal or greater consideration . . . within 90 days.
Section 112.312(12)(a), F.S.
“Gifts” May Include:
- Real property
- Tangible or intangible personal property.
- Food or beverages
- Transportation
- Lodging
- Flowers and floral arrangements
- Entrance fees and tickets
- Preferential rates
- Membership dues
- Any other similar service or thing having an attributable value

“Gifts” Do Not Include
Section 112.312(12)(b), F.S.
- Salary associated with private employment
- Campaign contributions
- Awards in recognition of service
- Gifts from “government officer or employee” organizations

Anti-solicitation
112.3148(3), F.S.
- A RIPE cannot solicit any gift, of any value, from:
  - A lobbyist who lobbies his/her agency
  - A lobbyist’s partner, firm, employer, or principal
  - A vendor

  If it would benefit the RIPE, another RIPE, or a member of the RIPE’s immediate family.
Prohibition of Acceptance
112.3148(4), F.S.

A RIPE cannot accept, directly or indirectly, a gift valued at over $100 from:
- A vendor doing business with the RIPE’s agency
- A political committee
- A lobbyist who lobbies the RIPE’s agency
- The partner, firm, employer, or principal of a lobbyist

Indirect Gifts

- Indirect gifts exist where a prohibited gift (provided by a lobbyist, vendor, etc) is provided to a person other than the RIPE, but the benefit of the gift is ultimately received by the RIPE.
- Rule 34-13.310(6), Florida Administrative Code—Commission’s indirect gifts rule containing eight-factor test.

Reporting by Donors

A prohibited donor who makes, or directs another to make, a gift having a value in excess of $25, but not in excess of $100, other than a gift that the donor knows will be accepted on behalf of a governmental entity or charitable organization, must file a report regarding the gift with the Commission.
Gifts from Relatives & Friends
112.3148(8), F.S.

- Applies only to Reporting Individuals
- Section 112.3148(1) – Gifts from “relatives” of any amount can be accepted
  - No reporting requirement
- Section 112.3148(8)(a) – Gifts from friends in community of any amount can be accepted
  - Have to report if over $100 on a Form 9
  - CEO 16-01 – Do not accept gift of over $100 if friend is a lobbyist/vendor!

CASE STUDY

You are a County Commissioner. While attending a meeting of the board, a local businessman offers you two tickets to a charity polo match featuring Prince Harry! The tickets reflect no dollar value but rather have “invitation only” and “not-for-resale” stamped on the front. What ethical issues does this scenario raise, if any?
Honoraria Law
Section 112.3149, F.S.

- Applies to RIPEs.
- Implicated when you are asked to give a talk.
- Like 112.3148, F.S., identifies “lobbyists,” “vendors,” “political committees,” and certain others.
- Unlike 112.3148, F.S., has no $ threshold.
- “Honorarium” means a payment of money or other value for an oral presentation or writing.

Honoraria Law: Section 112.3149, F.S.

- RIPEs cannot solicit, from anyone, an honorarium related to their public duties.

  AND

- RIPEs cannot accept an honorarium from a lobbyist, principal/partner/firm of a lobbyist, political committee, or vendor.

The Honoraria Law Does Allow:

- The acceptance of actual and reasonable honorarium event related expenses including:
  - Transportation
  - Lodging
  - Food & Beverages
  - Registration fees
  - For self and spouse
Expenditure Ban
Section 112.3215(6)(a), F.S.

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 any expenditure made for the purpose of lobbying.

“Expenditure”

Means a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. 112.3215(1)(d), F.S.

Expenditure Ban
Section 112.3215(6)(a), F.S.

- Expenditures made for the purpose of lobbying include:
  - Items of any value given by an individual seeking to influence any agency official or employee with respect to policy or procurement decisions or
  - Attempting to obtain the goodwill of an agency official or employee.
- Includes gifts having a value of less than $100 formerly permitted by Section 112.3148, F.S.
- Includes honorarium event related expenses formerly permitted under 112.3149, F.S.
“Lobbyist”

Someone who is paid to lobby or
Someone who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that person or entity.

THANK YOU!

Contact
Caroline Klancke
Attorney
Florida Commission on Ethics
P.O. Drawer 15709
Tallahassee, FL 32317-5709
(850) 488-7864
klancke.caroline@leg.state.fl.us