



Wednesday, October 4, 2023, 6:00 p.m.

City Hall Auditorium
200 East University Avenue
Gainesville, FL 32601

Authority Members

Craig Carter - Member
James Coats, IV - Member
Tara Ezzell - Member
Robert Karow - Member
Eric Lawson - Member

If you have a disability and need accommodation in order to participate in this meeting, please call (352) 334-5051 at least two business days in advance. TTY (Text Telephone Telecommunication Device) users please call 711 (Florida Relay Service). For Speech to Speech (STS) relay, please call 1-877-955-5334. For STS Spanish relay, please call 1-877-955-8773. For STS French Creole relay, please call 1-877-955-8707.

A. CALL TO ORDER

Agenda Statement: The Gainesville Regional Utilities Authority encourages civil public speech. The Gainesville Regional Utilities Authority expects each person entering this chamber to treat others with respect and courtesy. Speakers are expected to focus on agenda items under discussion. Signs, props, posters, food, and drinks should be left outside the auditorium.

B. ADMINISTRATIVE ITEMS

1. 2023-938 Oath of Office for Authority Members (NB)

Department: City Commission

Description: City of Gainesville Mayor Harvey L. Ward, Jr. will administer an oath of office for each member of the Authority.

Fiscal Note: None.

Recommendation: City of Gainesville Mayor Harvey L. Ward, Jr. administer an oath of office to each Authority member individually.

2. 2023-939 Election of Officers (NB)

Department: City Clerk

Description: In accordance with Florida House Bill 1645, which became law on July 1, 2023, the Authority members must elect a chair and vice-chair as their first act of official business. To aid in making the election process efficient, each board member will introduce themselves and give a short (approximately two (2) minute) bio. The City Clerk will then call for nominations from the members and guide them through the election process.

Fiscal Note: None.

Recommendation: The City Clerk or her designee assist the Authority members in electing a chair and vice-chair.

C. ADOPTION OF THE AGENDA

D. GENERAL MANAGER COMMENTS

E. BUSINESS DISCUSSION ITEMS

1. **2023-940 Code of Business Conduct, Bylaws and Meeting Logistics (B)**
Department: GRU General Manager

Description:

In order for meetings to be run efficiently and effectively, the Authority should meet on an established day each month in an established location and conduct their meetings in accordance with an established code of business conduct and bylaws. Staff will present recommendations for each of these for the Authority's consideration.

Fiscal Note: None.

Recommendation: Hear a presentation from staff and provide direction on meeting logistics.

2. **2023-941 Overview of Sunshine Law, Ethics and Public Records**
Department: City Attorney's Office

Description: The City Attorney or his designee will present an overview of the Sunshine Law, Ethics and Public Records.

Fiscal Note: None.

Recommendation: Hear a presentation from staff.

F. MEMBER COMMENT

G. ADJOURNMENT



Gainesville Regional Utilities Agenda Item Report

File Number: 2023-938

Agenda Date: October 4, 2023

Department: Gainesville Regional Utilities

Title: 2023-938 Oath of Office for Authority Members (NB)

Department: GRU General Manager

Description: In accordance with Florida House Bill 1645, which became law on July 1, 2023, each member of the Gainesville Regional Utilities Authority will be given an oath or affirmation by the Gainesville City Mayor or his designee, similar to the oath or affirmation required of a member of the City Commission.

Fiscal Note: None.

Explanation:

In accordance with Florida House Bill 1645, which became law on July 1, 2023, each member of the Gainesville Regional Utilities Authority will be given an oath or affirmation by the Gainesville City Mayor or his designee, similar to the oath or affirmation required of a member of the City Commission.

Recommendation: The Mayor or his designee administer an oath or affirmation to each Authority member individually.



Gainesville Regional Utilities Agenda Item Report

File Number: 2023-939

Agenda Date: October 4, 2023

Department: Gainesville Regional Utilities

Title: 2023-939 Election of Officers (NB)

Department: GRU General Manager

Description: In accordance with Florida House Bill 1645, which became law on July 1, 2023, the Authority members must elect a chair and vice-chair as their first act of official business. To aid in making the election process efficient, each board member will introduce themselves and give a short (approximately two (2) minute) bio. The General Manager or his designee will then call for nominations from the members and guide them through the election process.

Fiscal Note: None.

Explanation: In accordance with Florida House Bill 1645, which became law on July 1, 2023, the Authority members must elect a chair and vice-chair as their first act of official business. To aid in making the election process efficient, each board member will introduce themselves and give a short (approximately two (2) minute) bio. The General Manager or his designee will then call for nominations from the members and guide them through the election process.

Recommendation: The General Manager or his designee assist the Authority members in electing a chair and vice-chair.



File Number: 2023-940

Agenda Date: October 4, 2023

Department: Gainesville Regional Utilities

Title: 2023-940 Code of Business Conduct, Bylaws and Meeting Logistics

Department: GRU General Manager

Description: In order for meetings to be run efficiently and effectively, the Board should meet on an established day each month in an established location and conduct their meetings in accordance with an established code of conduct and bylaws. Staff will present recommendations for each of these for the Board's consideration.

Fiscal Note: None.

Explanation:

In order for meetings to be run efficiently and effectively, the Board should meet on an established day each month in an established location and conduct their meetings in accordance with established bylaws.

Staff will present recommendations for each of these for the Board's consideration.

Recommendation: Hear a presentation from staff and provide direction on meeting logistics.

GRU Authority

Inaugural Meeting of The GRU Authority

Oct. 4, 2023



Agenda

Electing Chair/Vice-Chair

General Manager's Remarks/Introductions

Administrative Decisions

Sunshine Law/Ethics/Public Records

Electing Chair

Chair Responsibilities

- Preside over all meetings
- Preserve order and decorum
- Sign approved documents
- Discuss and vote on topics
- Set agenda topics and priorities with general manager

Restrictions

- Designate alternate to motion or second motion

Vice-Chair Responsibilities

- Carry out duties in Chair's absence

- Quorum required; decisions made by majority present
- All requests go through the GM

Authority Member Terms

- One-year term: Robert Karow
- Two-year term: James Coats IV
- Three-year term:
- Four-year terms: Eric Lawson

Authority Member Designations

- Unincorporated Alachua County: James Coats IV; Robert Karow; Eric Lawson
- Private, non-government using 10,000 kWh: Eric Lawson
- Residential customer with GRU knowledge/background:

Board Member Introductions

- James Coats IV; Robert Karow; Eric Lawson

Voting Procedures

- Any member can make a nomination
- Members can nominate themselves
- Following a nomination, another member must second it
- Each nomination receives a vote
- A successful nomination requires three votes
- Vote for the Vice-Chair follows same rules



General Manager

GM Remarks

- Working together to accomplish GRU's mission
- Committed to Community: Idalia, 14,500 restored; mutual aid to neighboring cities
- Future: IRP; AMI; TRS; debt reduction
- Transition Documents
- Orientations

Executive Team Intros



Tony Cunningham
General Manager



Brett Goodman
Chief Operating
Officer



Cheryl McBride
Chief People Officer



Walter Banks
Chief Information
Officer



Claudia Rasnick
Chief Financial Officer



Kinn'zon Hutchinson
Chief Customer
Officer



Eric Walters
Chief Sustainability
Officer

Tony Cunningham, GM

Administrative Decisions

Administrative Items

Meeting Frequency

- Bill Requirement: At least once a month
- GRU Recommendation: Monthly, plus workshops, as needed

Meeting Location

- Requirements: None
- GRU Recommendation: GRU Administration Building

Meeting Day

- Requirements: None
- GRU Recommendation: First Wednesday

Meeting Time

- Requirements: None
- GRU Recommendation: 5:30 p.m.

Public Notice

- Bill Requirements: Noticed and open to public
- GRU Recommendation: 7 days prior

Public Comment

- **State Requirement:** Designate a specific period of time for public comment
- **GRU Recommendation:** 3 minutes per speaker after member motions, prior to vote

Member Comment

- **Requirements:** None
- **GRU Recommendation:** At meeting close

Documenting Meetings

- **Bill Requirements:** Minutes kept as required by law
- **GRU Recommendation:** Record meetings

Consent Agenda

- **Requirements:** None
- **GRU Recommendation:** Designate items for consent

Decision Points for Board

▪ Bill Requirement:

- Set rates, fees, assessments
- Acquire and construct property
- Exercise eminent domain
- Issue revenue bonds
- Dispose of assets
- Prepare and submit budget by July 1
- Appoint/remove GM/CEO

▪ GRU also Recommends:

- Approve contracts over \$100,000 with exceptions
- Report non-approved contracts over \$100,000 to Authority
- Report bid protests for non-approved contracts over \$100,000
- Provide fuel-levelization balance warning
- Review quarterly financial information

Recommendations for vote

- Meeting Frequency: **Monthly, plus workshops, as needed**
- Meeting Location: **GRU Admin Building**
- Meeting Time: **5:30 p.m.**
- Meeting Day: **First Wednesday**
- Public Comment: **After member motion; before vote**
- Member Comment: **Prior to meeting close**
- Documentation: **Record**
- Public Notice: **7 days prior**
- Consent Agenda: **Designated items**
- Decision Points: **As listed on previous page**

Ethics Policy and Code of Business Conduct

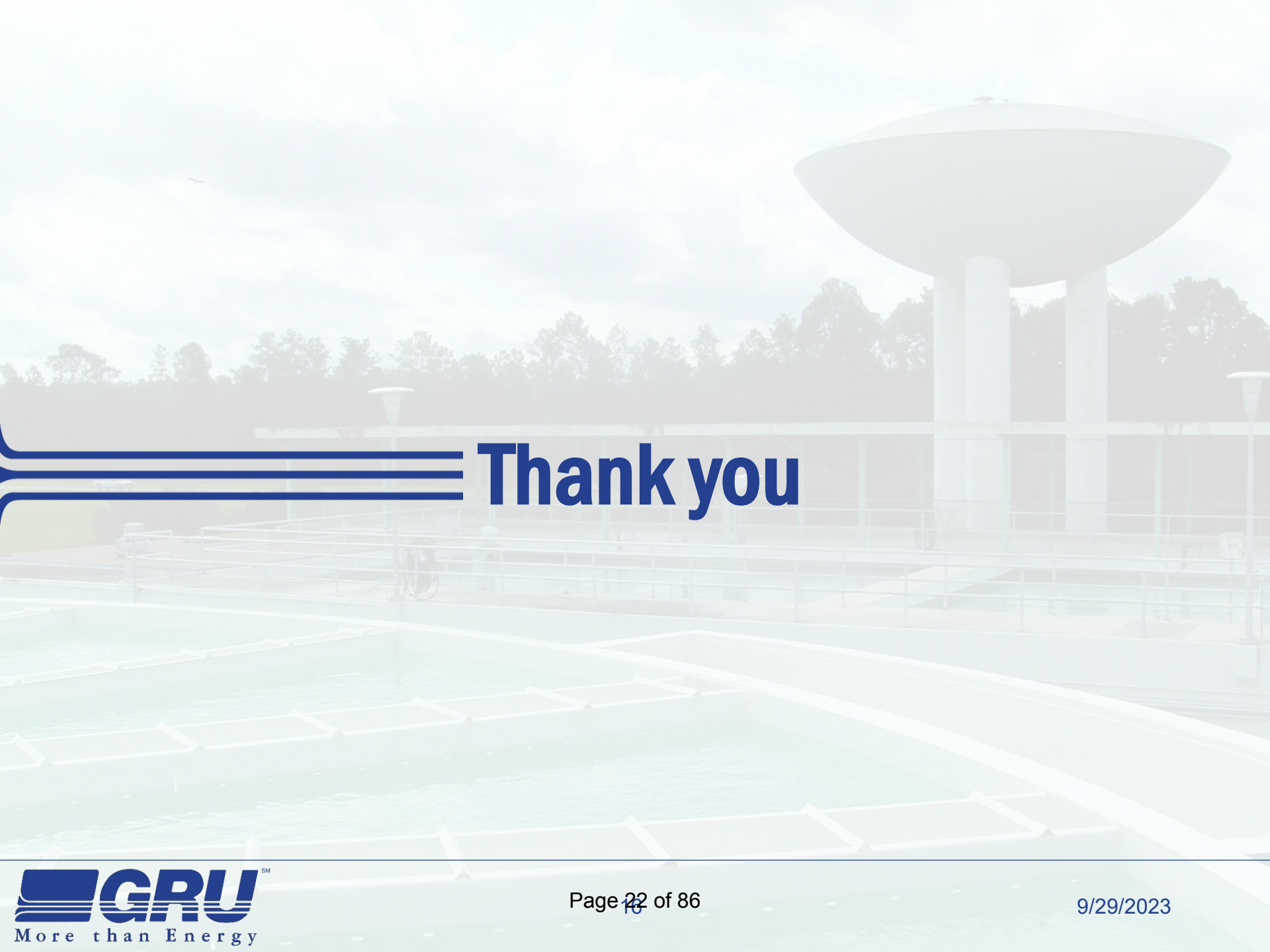
Bill Requirement: The Authority shall develop an ethics policy and a code of business conduct that shall be reviewed biennially

GRU Recommendation:

- Follow Florida Commission on Ethics guidelines
- Review Code of Business Conduct in development by GRU

City Attorney's Office

Sunshine Law/Ethics/ Public Records



Thank you



**Gainesville Regional Utilities Authority
Agenda Item Report**

File Number: 2023-941

Agenda Date: October 4, 2023

Department: City Attorney

Title: 2023-941 Overview of Sunshine Law, Ethics and Public Records

Department: City Attorney's Office

Description: The City Attorney or his designee will present an overview of the Sunshine Law, Ethics and Public Records.

Fiscal Note: None.

Explanation: To ensure the Gainesville Regional Utilities Authority is fully informed of the laws of the State of Florida applicable to public meetings and public service, the City Attorney or his designee will present information about the Sunshine Law, the Code of Ethics and Public Records laws.

Recommendation: Hear a presentation from staff.

Board Member Legal Basics



City of Gainesville
Office of the City Attorney

Overview

- Authority and Powers
- Sunshine Law
- Public Records Law
- Ethics Law
- Legislative vs. Quasi-Judicial Decisions

Authority and Powers

- **U.S. Constitution (10th Amendment)**

- States have concurrent and reserved “police powers” to promote health, safety, morals, and general welfare of their inhabitants.

- **Florida Constitution**

- Grants FL Legislature authority, by general or special law, to form municipalities that shall have certain powers (governmental, corporate, and proprietary).
 - *FL Const., Art. VIII, Sec. 2.*

- **Laws of Florida**

- City of Gainesville established:
 - *Originally incorporated in 1866; re-incorporated 1869; Ch. 12760, Laws of Fla. (1927), as amended by Ch. 90-394, Laws of Fla. (1990).*
- Municipal Home Rule Powers Act: municipalities may exercise any power for municipal purposes except when expressly prohibited by state law.
 - *Ch. 166, F.S. (1973).*

- **City of Gainesville**

- **Charter**: Most important legal document of city (similar to local constitution); initially adopted by FL Legislature; may be amended locally.
- **Local Enactments**: Comprehensive Plan; Code of Ordinances; Resolutions; Policies.

Sunshine Law

- Any **MEETING** of a public board/commission:

1. **OPEN**

2. **NOTICE**

3. **MINUTES.**

- §286.011, Florida Statutes (1967); Article I, Section 24, Florida Constitution (1992).

Sunshine Law – “Meeting”

- Any gathering, whether formal or casual, of two or more members of the same board with **discussion on any matter that will foreseeably come before that board** for action.
- *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 764 (Fla. 2010).

Public Records

- The public has a right to access **all materials** that are:
 - 1. made or received** by a public body, officer, employee, or persons acting on their behalf, and
 - 2. used to perpetuate, communicate, or formalize knowledge in connection with official business.**
- **Unless** specifically exempted by the Florida Constitution or Florida Statutes.
 - 1)** Article I, Section 24, Florida Constitution; **2)** Chapter 119, Florida Statutes.

Open Government Laws Liability

- **Attorney's Fees** – may be assessed against individual board member(s) for SL violation, if advice of attorney not followed.¹
- **Action Void** – any SL violation (irrespective of intent or degree of resulting prejudice/injury) is “irreparable public injury” that voids any resulting action.²
- **Knowing Violation** – SL: criminal 2nd degree misdemeanor, punishable by up to 60 days in jail and \$500 fine. PR: 1st degree mis./\$1000 fine.³
- **Negligent Violation** – noncriminal infraction, fine not exceeding \$500.⁴
- **Removal from Office.**⁵

- **1)** §286.011(4), F.S.; **2)** *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974), *Port Everglades Authority v. International Longshoreman's Association, Local 1922-1*, 652 So. 2d 1169 (Fla. 4th DCA 1995); **3)** §286.011(3)(b) and §119.10, F.S.; **4)** §286.011(3)(a) and §119.10, F.S.; **5)** §112.52, F.S.

Ethics

- **Board member's personal responsibility** to determine the application of Florida's Code of Ethics to any particular situation.
 - Advisory opinion – City Attorney's Office
 - Binding opinion – Florida Commission on Ethics (850-488-7864)
- ***Penalties for violations may include:*** impeachment; removal from office or employment; suspension; public censure; reprimand; demotion; reduction in salary level; forfeiture of no more than one-third salary per month for no more than twelve months; a civil penalty not to exceed \$10,000; restitution of any pecuniary benefits received, and triple the value of a gift from a political committee; forfeiture of all rights and benefits under the retirement system to which they belong.

Ethics – Annual Training

§112.3142, F.S.

- All ***elected municipal officers*** must complete 4 hours of ethics training each calendar year which addresses, at a minimum: §8, Art. II of the FL Constitution; the Code of Ethics for Public Officers and Employees, and FL's Sunshine and Public Records Laws.
- Must receive training as close as possible to date that officer assumes office.

Ethics – Disclosures

§112.3144 and §112.3145, F.S.

Only certain boards required to file these disclosures.

- **Form 6** – Full Financial Disclosure (*elected officials only*)
- **Form 1** – Limited Financial Disclosure
 - Sources and types of financial interests; no dollar values.
- **Form 2** – Quarterly Client Disclosure
 - Filed only if you or a partner or associate of your professional firm represent a client for compensation before the City.
- **Form 9** – Quarterly Gift Disclosure
 - Filed only if you received a gift worth more than \$100, other than gifts from “relatives” (defined in §112.312, F.S.) or gifts primarily associated with your private business/employment.
- Form 6 should be electronically filed annually by July 1 with the Florida Commission on Ethics. Other forms filed with the Supervisor of Elections and electronically with the FCOE. See Staff Liaison or City Clerk’s Office for assistance.

Ethics - Behavior

Public Duties vs. Private Interests

- May not be employed with or have a contract with any business or agency: 1) that is regulated by or doing business with the City, or 2) when such relationship poses a frequently recurring conflict between the official's private interests and public duties.¹
- May not either: 1) corruptly use your position or the resources thereof, or 2) use info not available to the public to obtain a special privilege or benefit for yourself or someone else.²

Gifts

- May not solicit or accept anything of value that is based on understanding that your vote, official action, or judgment would be influenced.³
- May not otherwise accept a gift worth more than \$100 from anyone who has lobbied you or the City within the past 12 months, or the partner, firm, employer, or principal of such a lobbyist, or from a political committee or vendor doing business with the City.⁴

Ethics - Voting

- All board members are **required to vote**, unless:
 1. There is or appears to be a possible **voting conflict**, or
 2. To avoid potential **bias or prejudice** in a quasi-judicial proceeding.¹

- §286.012, F.S.

Ethics - Voting Conflicts

- Any matter that would result in a special private gain or loss to the board member or a relative, business associate, or principal by whom the board member is retained.
 - **Relative:** father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.
 - **Principal by whom retained:** an individual or entity that for something of value has permitted or directed another to act for the individual or entity, including a client, employer, or the parent, subsidiary or sibling organization of one's client or employer.

- §112.3143, F.S.

Ethics - Voting Conflicts

- If conflict exists, **must be disclosed**:
 - Known prior to the meeting – COE Form 8b distributed to board members and verbally disclosed.
 - Unknown prior to the meeting – verbally disclosed and COE Form 8b filed with staff liaison within 15 days and distributed at next meeting.
- After disclosure, appointed board members must abstain from voting (and may not be considered for quorum purposes), but **may participate** in the discussion of the matter.
- §112.3143, F.S.

Legislative vs. Quasi-judicial

- Generally two types of local government board decisions:
 - **Legislative** – makes law/policy that generally applies to a broad group of citizens.
 - **Quasi-judicial** – applies already-established law/policy to a specific, individualized situation (i.e., determining whether a specific application meets existing regulations or requirements).

Quasi-judicial Hearings

- Hearing Requirements (and judicial review standards):
 - **Procedural Due Process**¹
 1. Adequate prior notice,
 2. Fair opportunity to be heard, present evidence, and cross-examine any witnesses, and
 3. Unbiased decision-maker.
 - **Essential requirements of correct law**
 - **Competent, substantial evidence**

• 1) 14th Amendment, U.S. Constitution; Article I, Section 9, Florida Constitution.

Quasi-judicial Hearings

- Unbiased decision-maker:
 - Hearings must be free from any just suspicion of prejudice, unfairness, fraud, or oppression.¹
 - Mere political bias or adverse political philosophy does not equal bias.²
 - Ex-parte communications prohibited.³ Must disclose at hearing any inadvertent communications.
- **1)** *Bd. of Pub. Instruction of Broward Cnty. v. State ex rel. Allen*, 219 So. 2d 430, 432 (Fla. 1969); **2)** *Hortonville Joint School Dist. No. 1 v. Hortonville Educ. Ass'n*, 426 U.S. 482 (1976); **3)** See *Jennings v. Dade County*, 589 So. 2d 1337 (Fla. 3d DCA 1991).



•Questions?

BOARD MEMBERS ORIENTATION HANDBOOK

This Handbook was prepared to assist members of the City of Gainesville's miscellaneous advisory boards in becoming familiar with the state and local laws that provide the basic framework for municipal government and the operation of the board. As such, this Handbook provides a basic overview and is not an exhaustive and authoritative legal publication and does not address all of the unique factual circumstances in which legal questions may arise. Please contact the City Attorney's Office whenever you have legal questions concerning your duties as a board member.

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(Powers, Charter, Ordinances and Resolutions)

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BASIC FRAMEWORK OF CITY GOVERNMENT

The City of Gainesville is a municipal corporation vested under Article VI", Section 2 of the Florida Constitution with corporate, proprietary and governmental powers. Similar to private corporations, the City is comprised of a board of directors (City Commission — sets policy and makes local law), an executive team (Charter Officers — manages and administers the daily business of the City) and shareholders (taxpayers/electors — who we alt serve). In contrast to private corporations, the primary purpose of the municipal corporation is to provide public services and safeguard the public health, safety and welfare.

The Municipal Home Rule Powers Act (Chapter 166, Florida Statutes) acknowledges that the Florida Constitution grants cities broad powers necessary to conduct municipal government, functions and services, and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by general or special law. This broad grant of power is commonly referred to as "Home Rule Power."

The City of Gainesville has adopted its own Charter as the highest level of local law. The City Charter can only be amended by: 1) ordinance approved by six City Commissioners and then approved by vote of the City electors; 2) petition signed by 10% of the registered voters of the City and then approved by vote of the City electors; or 3) Special Act of the State Legislature.

In exercising municipal power, the City Commission adopts ordinances, which are defined in Florida Statutes as "an official legislative action of a governing body, which action is a regulation of a general and permanent nature and enforceable as a local law." Each ordinance must be presented in writing, noticed in accordance with law and, per Section 2.07 of the City Charter, approved by an affirmative vote of four or more members of the City Commission. The Clerk of the Commission keeps a permanent copy of each ordinance adopted by the City Commission and most ordinances are codified in the City of Gainesville Code of Ordinances.

A searchable version of both the City of Gainesville Charter and the Code of Ordinances is available at: https://www.municode.com/library/fl/gainesville/codes/code_of_ordinances

The City Commission also adopts Resolutions, defined in Florida Statutes as "an expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of e particular item of the administrative business of the governing body." Each resolution must be presented in writing and, per Section 2.07 of the City Charter, approved by an affirmative vote of four or more members of the City Commission. The City Commission adopts by resolution its own rules of procedure to govern the order and conduct of its meetings, and it approves any rules of procedure of advisory boards.

Advisory boards are generally created by and under the authority of the City Commission as outlined above.

GOVERNMENT-IN-THE-SUNSHINE LAW

I. WHAT IS THE GOVERNMENT-IN-THE-SUNSHINE LAW?

Florida's "Sunshine Law" is both a Florida Constitutional (Article I, Section 24, Subsection (b), Florida Constitution) and statutory (Sections 286.011 and 286.0114, Florida Statutes) right of access to governmental proceedings of public boards or commissions. The purpose of the law is to maintain the faith of the public in its government by requiring open meetings and allowing for public input in governmental decisions. The Office of the Attorney General each year prepares the Government-in-the-Sunshine Manual (a very thorough reference for compliance with both the Sunshine Law and the Public Records Law); a searchable version is available at: <http://www.myfloridalegal.com/sun.nsf/sunmanual>

II. WHO DOES THE SUNSHINE LAW APPLY TO?

The Sunshine Law applies equally to elected and appointed boards or commissions of any state agency or authority or of any agency or authority of any county, municipal corporation or political subdivision. Members-elect of public boards or commissions are covered by the Sunshine Law immediately upon their election to public office. Members-elect should not discuss the board's business with other board members who will serve with them, except in a publicly held meeting. Members-elect can, however, meet privately with the member they are replacing, as the two will not serve on the same board concurrently.

III. WHAT IS A MEETING?

The Sunshine Law applies to meetings of two or more members of the same board to discuss board business. More specifically, the law applies to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter which will foreseeably come before that board for action. The Sunshine Law applies to all discussions or deliberations as well as the final action taken by a board or commission. If an individual board member has been delegated the authority to act on behalf of his or her board, then any meeting he or she attends for that purpose is subject to the Sunshine Law. The Sunshine Law does not apply to a meeting between individuals who are members of different boards.

For purposes of the Sunshine Law, what constitutes a "meeting" of two or more members of the same board is comprehensive and includes but is not limited to the following. Essentially, it is not the method of communication that is important, but rather the topic of the communication. If it is about a matter on which foreseeable action may be taken by the board, it should not be discussed outside of a public meeting.

- In person meetings;
- Telephone conversations;
- Written correspondence, such as letters, emails, text messages and even a report circulated among board members for comments;
- Facebook, Twitter or similar social media posts;
- De facto conversations.

Two or more members of the same board are not prohibited under the Sunshine Law from meeting socially at non-board functions, provided the members refrain from discussing any matter that may foreseeably come before the board. However, when attending a non-board function, be careful that a discussion with a non-board member does not become an indirect conversation with other members of the board (i.e., de facto conversation). For example, a court found that a "meeting" had occurred that was in violation of the Sunshine Law where, at a private breakfast meeting during which members of the same board individually questioned a sheriff but did not communicate directly with one another, the sheriff essentially acted as a common facilitator by receiving comments from each board member in front of the other board members.

IV. WHAT ARE THE REQUIREMENTS OF THE SUNSHINE LAW?

There are four basic requirements of the Sunshine Law:

1. **Reasonable notice** of board meetings must be given, meaning notice at such time and in such manner as will enable interested members of the public to attend the meeting;
2. **Board meetings must be open to the public.** While the Sunshine Law does not specify where a board meeting must be held, it does prohibit meetings at any facility that discriminates, is not accessible by persons with disabilities, or otherwise operates in such a manner as to unreasonably restrict public access to such facility. There are few exceptions that allow the City Commission to hold a meeting that is not open to the public, the most common include: settlement negotiations or strategy sessions related to litigation expenditures; meetings relating solely to the evaluation of claims or offers of compromise of claims, filed with the risk manager; and collective bargaining sessions;
3. **Minutes** of the board meeting must be taken, meaning a brief written summary reflecting the events of the meeting; and
4. **The public must be given a reasonable opportunity to be heard** prior to the City Commission taking official action on a proposition. Again, the law provides a number of exceptions, such as emergency situations affecting the public health, safety or welfare; ministerial acts, such as the approval of minutes and ceremonial proclamations; meetings exempt from the Sunshine Law requirements; and quasi-judicial proceedings. In addition, the law makes clear that the City can continue to maintain orderly conduct and proper decorum at City meetings and can establish certain reasonable time and manner restrictions on the opportunity to be heard.

V. PENALTIES IMPOSED FOR VIOLATION OF THE SUNSHINE LAW

Non-criminal Infractions. Any person subject to the law that violates the Sunshine Law may be adjudicated guilty of a non-criminal infraction punishable by a fine not exceeding \$500. The state attorney may pursue actions on behalf of the state against public officials that result in findings of guilt for a non-criminal infraction (Section 286.011(3)(a), Florida Statutes).

Criminal Penalties. Any person subject to law that knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree, which is punishable by a term of imprisonment not to exceed 60 days and/or a fine up to \$500 (Section 286.011(3)(b), Florida Statutes).

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

PUBLIC RECORDS LAW

I. WHAT IS THE FLORIDA PUBLIC RECORDS LAW?

Florida's "Public Records Law" is both a Florida Constitutional (Article 1, Section 24, Subsection (b), Florida Constitution) and statutory (Sections 119.01 through 119.19, Florida Statutes) right of access to the records of the state and local governments as well as to private entities acting on their behalf. The purpose of the law is to ensure open public records so that Florida's citizens can directly observe the actions of the government.

The City has adopted Policy No. G-5 dated May 6, 2010 and revised January 7, 2020, and Administrative Procedure No. G-5 dated May 6, 2010, and revised January 24, 2013, to provide guidance to employees and elected and appointed officials concerning their obligation to comply with the Public Records Law.

Attachment A to this Handbook is a copy of Public Records Law training materials for City officials and employees, and includes the official Public Records Policy.

II. WHAT IS A PUBLIC RECORD?

The Public Records Law applies to all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge. Section 119.011(1), 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 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. A very limited example of a material that does not fall within the definition of public record is a preliminary draft or notes that were prepared strictly for the personal use of the writer and are not shown to anyone.

All public records, regardless of whether they are in final form, are open for public inspection unless the legislature has specifically exempted them from disclosure. In addition, all public records are subject to inspection even if made or received on an official's home computer or personal email account. Therefore, the City highly recommends that board members use a City email account and City computers for public business. When a private computer or email is used, the board member is responsible for retaining and providing those records.

III. RETENTION OF PUBLIC RECORDS

Each board member is individually responsible for maintaining public records in his or her custody, and for keeping such records for the length of time specified in the official Florida Department of State retention schedule.

Common examples of retention length:

- Duplicates: until obsolete, superseded, or administrative value is lost.
- Transitory messages (meeting reminders, most voicemails, event announcements, etc.): until obsolete, superseded, or administrative value is lost.
- Other public records: specified in retention schedule, could be permanently.

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. Public records are not the personal property of board members.

Section 119.021(2)(b), Florida Statutes requires agencies to establish programs for disposing of records without sufficient legal, fiscal, administrative or archival value pursuant to retention schedules established by the Division of Library and Information Services at the Department of State. Any specific questions regarding the retention and disposal of public records should be referred to the Clerk of the Commission, the City Attorney, or the Division of Library and Information Services at the Department of State.

IV. HOW MUST A PUBLIC RECORDS REQUEST BE MADE? AND TO WHOM?

See Attachment A.

V. PENALTIES FOR REFUSING TO PRODUCE PUBLIC RECORDS

Civil Action. Any person denied access to public records under Chapter 119, Florida Statutes, may institute a civil action in circuit court against the City in order to compel compliance with the law. Section 119.11(1), Florida Statutes, provides that when such an action is filed, it is entitled to an immediate hearing and takes priority over other pending cases. If the person seeking public records prevails before the trial court, the City must comply with the court's judgment within 48 hours unless: 1) otherwise provided by the trial court; or 2) such determination is stayed within that period by an appellate court.

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

Attorney's Fees. Section 119.12(1), Florida Statutes, provides that if a civil action is filed against the City to enforce the provisions of the Public Records Law, and if the court determines that the City unlawfully refused to permit a public record to be inspected, examined, or copied, the court must assess the reasonable costs of enforcement, including reasonable attorney's fees, against the City. Attorney's fees may also be awarded for a successful appeal of a denial of access.

ETHICS

Members of the City Commission, certain appointed board members and certain city employees are subject to the "Code of Ethics for Public Officers and Employees" (Chapter 112, Part III, Florida Statutes.) The purpose of this Code of Ethics is to protect the integrity of government by ensuring that public officials conduct themselves efficiently and faithfully and according to the highest standards of ethics.

The Florida Commission on Ethics (the "COE") is a public agency, with an appointed board, created by the Florida Legislature to "serve as guardian of the standards of conduct" for state and local public officials. In addition to its constitutional duties regarding the investigation of complaints, the COE renders advisory opinions to public officials; prescribes forms for public disclosure; prepares mailing lists of public officials subject to financial disclosure for use by Supervisors of Elections; makes recommendations to disciplinary officials when appropriate for violations of ethics and disclosure laws, since it does not itself impose penalties; administers automatic fines for public officers and employees who fail to timely file required annual financial disclosure; and each year publishes the "Guide to the Sunshine Amendment and Code of Ethics for Public Officers and Employees," which is a comprehensive overview of Florida's ethics laws and requirements for public officials. Attachment B to this Handbook is the 2022 version of the Guide.

WARNING: While Attachment B is a good starting point for the elected or appointed official, it is important to understand that the answer to ethics questions depends on the facts of each circumstance. Ethics violations carry significant civil and criminal penalties, including: removal from office or employment, suspension, public censure, reprimand, demotion, reduction in salary level, forfeiture of salary, civil monetary penalties, restitution of pecuniary benefits received and imprisonment. Because of this, ethics issues merit careful consideration on a case-by-case basis.

In addition, ethics issues are often personal to the individual official and as such the City Attorney's Office generally does not provide legal representation regarding an ethics issue that an individual board member is facing. The City Attorney's Office may provide informal guidance on the matter if it is one likely to be faced by several or all board members, including most questions of voting conflicts. When the City Attorney's Office does provide guidance, it is with the express understanding that the City Attorney's Office serves as the attorney for the City and not for individual board members.

The City Attorney's Office highly recommends that board members speak directly with the COE regarding questions of applying the Code of Ethics to personal situations. The COE staff may be reached at 850-488-7864 or the City Attorney's Office can assist you in contacting the COE. In addition, you can find helpful resources on the COE website at: <http://www.ethics.state.fl.us/>

- **Public Duties vs. Private Interests**
 - May not be employed with or have a contract with any business or agency: 1) that is regulated by or doing business with the City, or 2) when such relationship poses a frequently recurring conflict between the official's private interests and public duties. (See Section 112.313(7), F.S.)
 - May not either: 1) corruptly use your position or the resources thereof, or 2) use information not available to the public to obtain a special privilege or benefit for yourself or someone else. (See Section 112.313(6) and (8), F.S.)
- **Gifts**
 - May not solicit or accept anything of value that is based on the understanding that your vote, official action, or judgment would be influenced. (See Section 112.313(2), F.S.)
 - May not otherwise accept a gift worth more than \$100 from anyone who has lobbied you or the City within the past 12 months, or the partner, firm, employer, or principal of such a

- lobbyist, or from a political committee or vendor doing business with the City. (See Section 112.3148, F.s.)
- **Disclosures** (forms received from and filed with Supervisor of Elections)
 - FORM 1— Limited financial disclosure; annually by July 1.
 - FORM 2 — Quarterly Client Disclosure; Filed only if you or a partner or associate of your professional firm represent a client for compensation before the City.
 - FORM 9 — Filed only if you received a gift worth more than \$100, other than gifts from "relatives" (defined in Section 112.312, F.S.) or gifts primarily associated with your private business or employment.

 - **Voting**
 - All board members required to vote if present, unless there is a voting conflict. (See Section 286.012, F.S.)
 - Voting conflict means any matter that would result in a special private gain or loss to the board member or a relative, business associate, or principal by whom the board member is retained. (See Section 112.3143, F.S.)
 - Relative — father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.
 - Principal by whom retained— an individual or entity that for something of value has permitted or directed another to act for the individual or entity, including a client, employer, or the parent, subsidiary or sibling organization of one's client or employer.
 - If conflict exists, it must be disclosed.
 - Known prior to meeting — COE FORM 8b distributed to board members and verbally disclosed.
 - Unknown prior to meeting — verbally disclosed and COE FORM 8b filed with city staff liaison within 15 days and distributed at next meeting.
 - After disclosure, board members must abstain from voting (and may not be considered for quorum purposes), but may participate in the discussion of the matter.

FLORIDA COMMISSION ON ETHICS



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

2023

State of Florida
COMMISSION ON ETHICS

John Grant, *Chair*
Tampa

Glenton “Glen” Gilzean, Jr., *Vice Chair*
Orlando

Michelle Anchors
Fort Walton Beach

William P. Cervone
Gainesville

Don Gaetz
Niceville

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St. Petersburg

Jim Waldman
Fort Lauderdale

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

*Please direct all requests for information to this number.

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I. HISTORY OF FLORIDA'S ETHICS LAWS

Florida has been a leader among the states in establishing ethics standards for public officials and recognizing the right of citizens to protect the public trust against abuse. Our state Constitution was revised in 1968 to require a code of ethics, prescribed by law, for all state employees and non-judicial officers prohibiting conflict between public duty and private interests.

Florida's first successful constitutional initiative resulted in the adoption of the Sunshine Amendment in 1976, providing additional constitutional guarantees concerning ethics in government. In the area of enforcement, the Sunshine Amendment requires that there be an independent commission (the Commission on Ethics) to investigate complaints concerning breaches of public trust by public officers and employees other than judges.

The Code of Ethics for Public Officers and Employees is found in Chapter 112 (Part III) of the Florida Statutes. Foremost among the goals of the Code is to promote the public interest and maintain the respect of the people for their government. The Code is also intended to ensure that public officials conduct themselves independently and impartially, not using their offices for private gain other than compensation provided by law. While seeking to protect the integrity of government, the Code also seeks to avoid the creation of unnecessary barriers to public service.

Criminal penalties, which initially applied to violations of the Code, were eliminated in 1974 in favor of administrative enforcement. The Legislature created the Commission on Ethics that year "to serve as guardian of the standards of conduct" for public officials, state and local. Five of the Commission's nine members are appointed by the Governor, and two each are appointed by the President of the Senate and Speaker of the House of Representatives. No more than five Commission members may be members of the same political party, and none may be lobbyists, or hold any public employment during their two-year terms of office. A chair is selected from among the members to serve a one-year term and may not succeed himself or herself.

In 2018, Florida's Constitutional Revision Commission proposed, and the voters adopted, changes to Article II, Section 8. The earliest of the changes will take effect December 31, 2020, and will prohibit officials from abusing their position to obtain a disproportionate benefit for themselves

or their spouse, child, or employer, or for a business with which the official contracts or is an officer, partner, director, sole proprietor, or in which the official owns an interest. Other changes made to the Constitution place restrictions on lobbying by certain officeholders and employees, and put additional limits on lobbying by former public officers and employees. These changes will become effective December 31, 2022.

II. ROLE OF THE COMMISSION ON ETHICS

In addition to its constitutional duties regarding the investigation of complaints, the Commission:

- Renders advisory opinions to public officials;
- Prescribes forms for public disclosure;
- Prepares mailing lists of public officials subject to financial disclosure for use by Supervisors of Elections and the Commission in distributing forms and notifying delinquent filers;
- Makes recommendations to disciplinary officials when appropriate for violations of ethics and disclosure laws, since it does not impose penalties;
- Administers the Executive Branch Lobbyist Registration and Reporting Law;
- Maintains financial disclosure filings of constitutional officers and state officers and employees; and,
- Administers automatic fines for public officers and employees who fail to timely file required annual financial disclosure.

III. THE ETHICS LAWS

The ethics laws generally consist of two types of provisions, those prohibiting certain actions or conduct and those requiring that certain disclosures be made to the public. The following descriptions of these laws have been simplified in an effort to provide notice of their requirements. Therefore, we suggest that you also review the wording of the actual law. Citations to the appropriate laws are in brackets.

The laws summarized below apply generally to all public officers and employees, state and local, including members of advisory bodies. The principal exception to this broad coverage is the exclusion of judges, as they fall within the jurisdiction of the Judicial Qualifications Commission.

Public Service Commission (PSC) members and employees, as well as members of the PSC Nominating Council, are subject to additional ethics standards that are enforced by the Commission on Ethics under Chapter 350, Florida Statutes. Further, members of the governing boards of charter schools are subject to some of the provisions of the Code of Ethics [Sec. 1002.33(26), Fla. Stat.], as are the officers, directors, chief executive officers and some employees of business entities that serve as the chief administrative or executive officer or employee of a political subdivision. [Sec. 112.3136, Fla. Stat.].

A. PROHIBITED ACTIONS OR CONDUCT

1. Solicitation and Acceptance of Gifts

Public officers, employees, local government attorneys, and candidates are prohibited from soliciting or accepting anything of value, such as a gift, loan, reward, promise of future employment, favor, or service, that is based on an understanding that their vote, official action, or judgment would be influenced by such gift. [Sec. 112.313(2), Fla. Stat.]

Persons required to file financial disclosure FORM 1 or FORM 6 (see Part III F of this brochure), and state procurement employees, are prohibited from **soliciting** any gift from a political committee, lobbyist who has lobbied the official or his or her agency within the past 12 months, or the partner, firm, employer, or principal of such a lobbyist or from a vendor doing business with the official's agency. [Sec. 112.3148, Fla. Stat.]

Persons required to file FORM 1 or FORM 6, and state procurement employees are prohibited from directly or indirectly **accepting** a gift worth more than \$100 from such a lobbyist, from a partner, firm, employer, or principal of the lobbyist, or from a political committee or vendor doing business with their agency. [Sec.112.3148, Fla. Stat.]

However, notwithstanding Sec. 112.3148, Fla. Stat., no Executive Branch lobbyist or principal shall make, directly or indirectly, and no Executive Branch agency official who files FORM 1 or FORM 6 shall knowingly accept, directly or indirectly, **any expenditure** made for the purpose of lobbying. [Sec. 112.3215, Fla. Stat.] Typically, this would include gifts valued at less than \$100 that formerly were permitted under Section 112.3148, Fla. Stat. Similar rules apply to members and employees of the Legislature. However, these laws are not administered by the Commission on Ethics. [Sec. 11.045, Fla. Stat.]

Also, persons required to file Form 1 or Form 6, and state procurement employees and members of their immediate families, are prohibited from accepting any gift from a political committee. [Sec. 112.31485, Fla. Stat.]

2. *Unauthorized Compensation*

Public officers or employees, local government attorneys, and their spouses and minor children are prohibited from accepting any compensation, payment, or thing of value when they know, or with the exercise of reasonable care should know, that it is given to influence a vote or other official action. [Sec. 112.313(4), Fla. Stat.]

3. *Misuse of Public Position*

Public officers and employees, and local government attorneys are prohibited from corruptly using or attempting to use their official positions or the resources thereof to obtain a special privilege or benefit for themselves or others. [Sec. 112.313(6), Fla. Stat.]

4. *Abuse of Public Position*

Public officers and employees are prohibited from abusing their public positions in order to obtain a disproportionate benefit for themselves or certain others. [Article II, Section 8(h), Florida Constitution.]

5. *Disclosure or Use of Certain Information*

Public officers and employees and local government attorneys are prohibited from disclosing or using information not available to the public and obtained by reason of their public position, for the personal benefit of themselves or others. [Sec. 112.313(8), Fla. Stat.]

6. *Solicitation or Acceptance of Honoraria*

Persons required to file financial disclosure FORM 1 or FORM 6 (see Part III F of this brochure), and state procurement employees, are prohibited from **soliciting** honoraria related to their public offices or duties. [Sec. 112.3149, Fla. Stat.]

Persons required to file FORM 1 or FORM 6, and state procurement employees, are prohibited from knowingly **accepting** an honorarium from a political committee, lobbyist who has lobbied the person's agency within the past 12 months, or the partner, firm, employer, or principal of such a lobbyist, or from a vendor doing business with the official's agency. However, they may accept the payment of expenses related to an honorarium event from such individuals or entities, provided that the expenses are disclosed. See Part III F of this brochure. [Sec. 112.3149, Fla. Stat.]

Lobbyists and their partners, firms, employers, and principals, as well as political committees and vendors, are prohibited from **giving** an honorarium to persons required to file FORM 1 or FORM 6 and to state procurement employees. Violations of this law may result in fines of up to \$5,000 and prohibitions against lobbying for up to two years. [Sec. 112.3149, Fla. Stat.]

However, notwithstanding Sec. 112.3149, Fla. Stat., no Executive Branch or legislative lobbyist or principal shall make, directly or indirectly, and no Executive Branch agency official who files FORM 1 or FORM 6 shall knowingly accept, directly or indirectly, **any expenditure** made for the purpose of lobbying. [Sec. 112.3215, Fla. Stat.] This may include honorarium event related expenses that formerly were permitted under Sec. 112.3149, Fla. Stat. Similar rules apply to members and employees of the Legislature. However, these laws are not administered by the Commission on Ethics. [Sec. 11.045, Fla. Stat.]

B. PROHIBITED EMPLOYMENT AND BUSINESS RELATIONSHIPS

1. *Doing Business With One's Agency*

(a) A public employee acting as a purchasing agent, or public officer acting in an official capacity, is prohibited from purchasing, renting, or leasing any realty, goods, or services for his or her agency from a business entity in which the officer or employee or his or her spouse or child owns more than a 5% interest. [Sec. 112.313(3), Fla. Stat.]

(b) A public officer or employee, acting in a private capacity, also is prohibited from renting, leasing, or selling any realty, goods, or services to his or her own agency if the officer or employee is a state officer or employee, or, if he or she is an officer or employee of a political subdivision, to that subdivision or any of its agencies. [Sec. 112.313(3), Fla. Stat.]

2. *Conflicting Employment or Contractual Relationship*

(a) A public officer or employee is prohibited from holding any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. [Sec. 112.313(7), Fla. Stat.]

(b) A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will pose a frequently recurring conflict between the official's private interests and public duties or which will impede the full and faithful discharge of the official's public duties. [Sec. 112.313(7), Fla. Stat.]

(c) Limited exceptions to this prohibition have been created in the law for legislative bodies, certain special tax districts, drainage districts, and persons whose professions or occupations qualify them to hold their public positions. [Sec. 112.313(7)(a) and (b), Fla. Stat.]

3. Exemptions—Pursuant to Sec. 112.313(12), Fla. Stat., the prohibitions against doing business with one's agency and having conflicting employment may not apply:

- (a) When the business is rotated among all qualified suppliers in a city or county.

- (b) When the business is awarded by sealed, competitive bidding and neither the official nor his or her spouse or child have attempted to persuade agency personnel to enter the contract.
NOTE: Disclosure of the interest of the official, spouse, or child and the nature of the business must be filed prior to or at the time of submission of the bid on Commission FORM 3A with the Commission on Ethics or Supervisor of Elections, depending on whether the official serves at the state or local level.

- (c) When the purchase or sale is for legal advertising, utilities service, or for passage on a common carrier.

- (d) When an emergency purchase must be made to protect the public health, safety, or welfare.

- (e) When the business entity is the only source of supply within the political subdivision and there is full disclosure of the official's interest to the governing body on Commission FORM 4A.

- (f) When the aggregate of any such transactions does not exceed \$500 in a calendar year.

- (g) When the business transacted is the deposit of agency funds in a bank of which a county, city, or district official is an officer, director, or stockholder, so long as agency records show that the governing body has determined that the member did not favor his or her bank over other qualified banks.

- (h) When the prohibitions are waived in the case of ADVISORY BOARD MEMBERS by the appointing person or by a two-thirds vote of the appointing body (after disclosure on Commission FORM 4A).

- (i) When the public officer or employee purchases in a private capacity goods or services, at a price and upon terms available to similarly situated members of the general public, from a business entity which is doing business with his or her agency.

(j) When the public officer or employee in a private capacity purchases goods or services from a business entity which is subject to the regulation of his or her agency where the price and terms of the transaction are available to similarly situated members of the general public and the officer or employee makes full disclosure of the relationship to the agency head or governing body prior to the transaction.

4. *Additional Exemptions*

No elected public officer is in violation of the conflicting employment prohibition when employed by a tax exempt organization contracting with his or her agency so long as the officer is not directly or indirectly compensated as a result of the contract, does not participate in any way in the decision to enter into the contract, abstains from voting on any matter involving the employer, and makes certain disclosures. [Sec. 112.313(15), Fla. Stat.]

5. *Legislators Lobbying State Agencies*

A member of the Legislature is prohibited from representing another person or entity for compensation during his or her term of office before any state agency other than judicial tribunals. [Art. II, Sec. 8(e), Fla. Const., and Sec. 112.313(9), Fla. Stat.]

6. *Additional Lobbying Restrictions for Certain Public Officers and Employees*

A statewide elected officer; a member of the legislature; a county commissioner; a county officer pursuant to Article VIII or county charter; a school board member; a superintendent of schools; an elected municipal officer; an elected special district officer in a special district with ad valorem taxing authority; or a person serving as a secretary, an executive director, or other agency head of a department of the executive branch of state government shall not lobby for compensation on issues of policy, appropriations, or procurement before the federal government, the legislature, any state government body or agency, or any political subdivision of this state, during his or her term of office. [Art. II Sec 8(f)(2), Fla. Const. and Sec. 112.3121, Fla. Stat.]

7. *Employees Holding Office*

A public employee is prohibited from being a member of the governing body which serves as his or her employer. [Sec. 112.313(10), Fla. Stat.]

8. *Professional and Occupational Licensing Board Members*

An officer, director, or administrator of a state, county, or regional professional or occupational organization or association, while holding such position, may not serve as a member of a state examining or licensing board for the profession or occupation. [Sec. 112.313(11), Fla. Stat.]

9. *Contractual Services: Prohibited Employment*

A state employee of the executive or judicial branch who participates in the decision-making process involving a purchase request, who influences the content of any specification or procurement standard, or who renders advice, investigation, or auditing, regarding his or her agency's contract for services, is prohibited from being employed with a person holding such a contract with his or her agency. [Sec. 112.3185(2), Fla. Stat.]

10. *Local Government Attorneys*

Local government attorneys, such as the city attorney or county attorney, and their law firms are prohibited from representing private individuals and entities before the unit of local government which they serve. A local government attorney cannot recommend or otherwise refer to his or her firm legal work involving the local government unit unless the attorney's contract authorizes or mandates the use of that firm. [Sec. 112.313(16), Fla. Stat.]

11. *Dual Public Employment*

Candidates and elected officers are prohibited from accepting public employment if they know or should know it is being offered for the purpose of influence. Further, public employment may not be accepted unless the position was already in existence or was created without the

anticipation of the official's interest, was publicly advertised, and the officer had to meet the same qualifications and go through the same hiring process as other applicants. For elected public officers already holding public employment, no promotion given for the purpose of influence may be accepted, nor may promotions that are inconsistent with those given other similarly situated employees. [Sec. 112.3125, Fla. Stat.]

C. RESTRICTIONS ON APPOINTING, EMPLOYING, AND CONTRACTING WITH RELATIVES

1. Anti-Nepotism Law

A public official is prohibited from seeking for a relative any appointment, employment, promotion, or advancement in the agency in which he or she is serving or over which the official exercises jurisdiction or control. No person may be appointed, employed, promoted, or advanced in or to a position in an agency if such action has been advocated by a related public official who is serving in or exercising jurisdiction or control over the agency; this includes relatives of members of collegial government bodies. NOTE: This prohibition does not apply to school districts (except as provided in Sec. 1012.23, Fla. Stat.), community colleges and state universities, or to appointments of boards, other than those with land-planning or zoning responsibilities, in municipalities of fewer than 35,000 residents. Also, the approval of budgets does not constitute "jurisdiction or control" for the purposes of this prohibition. This provision does not apply to volunteer emergency medical, firefighting, or police service providers. [Sec. 112.3135, Fla. Stat.]

2. Additional Restrictions

A state employee of the executive or judicial branch or the PSC is prohibited from directly or indirectly procuring contractual services for his or her agency from a business entity of which a relative is an officer, partner, director, or proprietor, or in which the employee, or his or her spouse, or children own more than a 5% interest. [Sec. 112.3185(6), Fla. Stat.]

D. POST OFFICE HOLDING AND EMPLOYMENT (REVOLVING DOOR) RESTRICTIONS

1. Lobbying by Former Legislators, Statewide Elected Officers, and Appointed State Officers

A member of the Legislature or a statewide elected or appointed state official is prohibited for two years following vacation of office from representing another person or entity for compensation before the government body or agency of which the individual was an officer or member. Former members of the Legislature are also prohibited for two years from lobbying the executive branch. [Art. II, Sec. 8(e), Fla. Const. and Sec. 112.313(9), Fla. Stat.]

2. Lobbying by Former State Employees

Certain employees of the executive and legislative branches of state government are prohibited from personally representing another person or entity for compensation before the agency with which they were employed for a period of two years after leaving their positions, unless employed by another agency of state government. [Sec. 112.313(9), Fla. Stat.] These employees include the following:

(a) Executive and legislative branch employees serving in the Senior Management Service and Selected Exempt Service, as well as any person employed by the Department of the Lottery having authority over policy or procurement.

(b) Persons serving in the following position classifications: the Auditor General; the director of the Office of Program Policy Analysis and Government Accountability (OPPAGA); the Sergeant at Arms and Secretary of the Senate; the Sergeant at Arms and Clerk of the House of Representatives; the executive director and deputy executive director of the Commission on Ethics; an executive director, staff director, or deputy staff director of each joint committee, standing committee, or select committee of the Legislature; an executive director, staff director, executive assistant, legislative analyst, or attorney serving in the Office of the President of the Senate, the Office of the Speaker of the House of Representatives, the Senate Majority Party Office, the Senate Minority Party Office, the House Majority Party Office, or the House Minority Party Office; the Chancellor and Vice-Chancellors of the State University System; the general counsel to the Board of Regents; the

president, vice presidents, and deans of each state university; any person hired on a contractual basis and having the power normally conferred upon such persons, by whatever title; and any person having the power normally conferred upon the above positions.

This prohibition does not apply to a person who was employed by the Legislature or other agency prior to July 1, 1989; who was a defined employee of the State University System or the Public Service Commission who held such employment on December 31, 1994; or who reached normal retirement age and retired by July 1, 1991. It does apply to OPS employees.

PENALTIES: Persons found in violation of this section are subject to the penalties contained in the Code (see PENALTIES, Part V) as well as a civil penalty in an amount equal to the compensation which the person received for the prohibited conduct. [Sec. 112.313(9)(a)5, Fla. Stat.]

3. 6-Year Lobbying Ban

For a period of six years after vacation of public position occurring on or after December 31, 2022, a statewide elected officer or member of the legislature shall not lobby for compensation on issues of policy, appropriations, or procurement before the legislature or any state government body or agency. [Art. II Sec 8(f)(3)a., Fla. Const. and Sec. 112.3121, Fla. Stat.]

For a period of six years after vacation of public position occurring on or after December 31, 2022, a person serving as a secretary, an executive director, or other agency head of a department of the executive branch of state government shall not lobby for compensation on issues of policy, appropriations, or procurement before the legislature, the governor, the executive office of the governor, members of the cabinet, a department that is headed by a member of the cabinet, or his or her former department. [Art. II Sec 8(f)(3)b., Fla. Const. and Sec. 112.3121, Fla. Stat.]

For a period of six years after vacation of public position occurring on or after December 31, 2022, a county commissioner, a county officer pursuant to Article VIII or county charter, a school board member, a superintendent of schools, an elected municipal officer, or an elected special district officer in a special district with ad valorem taxing authority shall not lobby for compensation on issues

of policy, appropriations, or procurement before his or her former agency or governing body. [Art. II Sec 8(f)(3)c., Fla. Const. and Sec. 112.3121, Fla. Stat.]

4. *Additional Restrictions on Former State Employees*

A former executive or judicial branch employee or PSC employee is prohibited from having employment or a contractual relationship, at any time after retirement or termination of employment, with any business entity (other than a public agency) in connection with a contract in which the employee participated personally and substantially by recommendation or decision while a public employee. [Sec. 112.3185(3), Fla. Stat.]

A former executive or judicial branch employee or PSC employee who has retired or terminated employment is prohibited from having any employment or contractual relationship for two years with any business entity (other than a public agency) in connection with a contract for services which was within his or her responsibility while serving as a state employee. [Sec.112.3185(4), Fla. Stat.]

Unless waived by the agency head, a former executive or judicial branch employee or PSC employee may not be paid more for contractual services provided by him or her to the former agency during the first year after leaving the agency than his or her annual salary before leaving. [Sec. 112.3185(5), Fla. Stat.]

These prohibitions do not apply to PSC employees who were so employed on or before Dec. 31, 1994.

5. *Lobbying by Former Local Government Officers and Employees*

A person elected to county, municipal, school district, or special district office is prohibited from representing another person or entity for compensation before the government body or agency of which he or she was an officer for two years after leaving office. Appointed officers and employees of counties, municipalities, school districts, and special districts may be subject to a similar restriction by local ordinance or resolution. [Sec. 112.313(13) and (14), Fla. Stat.]

E. VOTING CONFLICTS OF INTEREST

State public officers are prohibited from voting in an official capacity on any measure which they know would inure to their own special private gain or loss. A state public officer who abstains, or who votes on a measure which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained, of the parent organization or subsidiary or sibling of a corporate principal by which he or she is retained, of a relative, or of a business associate, must make every reasonable effort to file a memorandum of voting conflict with the recording secretary in advance of the vote. If that is not possible, it must be filed within 15 days after the vote occurs. The memorandum must disclose the nature of the officer's interest in the matter.

No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss, or which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained, of the parent organization or subsidiary or sibling of a corporate principal by which he or she is retained, of a relative, or of a business associate. The officer must publicly announce the nature of his or her interest before the vote and must file a memorandum of voting conflict on Commission Form 8B with the meeting's recording officer within 15 days after the vote occurs disclosing the nature of his or her interest in the matter. However, members of community redevelopment agencies and district officers elected on a one-acre, one-vote basis are not required to abstain when voting in that capacity.

No appointed state or local officer shall participate in any matter which would inure to the officer's special private gain or loss, the special private gain or loss of any principal by whom he or she is retained, of the parent organization or subsidiary or sibling of a corporate principal by which he or she is retained, of a relative, or of a business associate, without first disclosing the nature of his or her interest in the matter. The memorandum of voting conflict (Commission Form 8A or 8B) must be filed with the meeting's recording officer, be provided to the other members of the agency, and be read publicly at the next meeting.

If the conflict is unknown or not disclosed prior to the meeting, the appointed official must orally disclose the conflict at the meeting when the conflict becomes known. Also, a written memorandum of voting conflict must be filed with the meeting's recording officer within 15 days of

the disclosure being made and must be provided to the other members of the agency, with the disclosure being read publicly at the next scheduled meeting. [Sec. 112.3143, Fla. Stat.]

F. DISCLOSURES

Conflicts of interest may occur when public officials are in a position to make decisions that affect their personal financial interests. This is why public officers and employees, as well as candidates who run for public office, are required to publicly disclose their financial interests. The disclosure process serves to remind officials of their obligation to put the public interest above personal considerations. It also helps citizens to monitor the considerations of those who spend their tax dollars and participate in public policy decisions or administration.

All public officials and candidates do not file the same degree of disclosure; nor do they all file at the same time or place. Thus, care must be taken to determine which disclosure forms a particular official or candidate is required to file.

The following forms are described below to set forth the requirements of the various disclosures and the steps for correctly providing the information in a timely manner.

1. FORM 1 - Limited Financial Disclosure

Who Must File:

Persons required to file FORM 1 include all state officers, local officers, candidates for local elective office, and specified state employees as defined below (other than those officers who are required by law to file FORM 6).

STATE OFFICERS include:

- 1) Elected public officials not serving in a political subdivision of the state and any person appointed to fill a vacancy in such office, unless required to file full disclosure on Form 6.

2) Appointed members of each board, commission, authority, or council having statewide jurisdiction, excluding members of solely advisory bodies; but including judicial nominating commission members; directors of Enterprise Florida, Scripps Florida Funding Corporation, and CareerSource Florida, and members of the Council on the Social Status of Black Men and Boys; the Executive Director, governors, and senior managers of Citizens Property Insurance Corporation; governors and senior managers of Florida Workers' Compensation Joint Underwriting Association, board members of the Northeast Florida Regional Transportation Commission, and members of the board of Triumph Gulf Coast, Inc.; members of the board of Florida is for Veterans, Inc.; and members of the Technology Advisory Council within the Agency for State Technology.

3) The Commissioner of Education, members of the State Board of Education, the Board of Governors, local boards of trustees and presidents of state universities, and members of the Florida Prepaid College Board.

LOCAL OFFICERS include:

1) Persons elected to office in any political subdivision (such as municipalities, counties, and special districts) and any person appointed to fill a vacancy in such office, unless required to file full disclosure on Form 6.

2) Appointed members of the following boards, councils, commissions, authorities, or other bodies of any county, municipality, school district, independent special district, or other political subdivision: the governing body of the subdivision; a community college or junior college district board of trustees; a board having the power to enforce local code provisions; a planning or zoning board, board of adjustments or appeals, community redevelopment agency board, or other board having the power to recommend, create, or modify land planning or zoning within the political subdivision, except for citizen advisory committees, technical coordinating committees, and similar groups who only have the power to make recommendations to planning or zoning boards, except for representatives of a military installation acting on behalf of all military installations within that jurisdiction; a pension board or retirement board empowered to invest pension or retirement funds or to determine entitlement to or amount of a pension or other retirement benefit.

3) Any other appointed member of a local government board who is required to file a statement of financial interests by the appointing authority or the enabling legislation, ordinance, or resolution creating the board.

4) Persons holding any of these positions in local government: mayor; county or city manager; chief administrative employee or finance director of a county, municipality, or other political subdivision; county or municipal attorney; chief county or municipal building inspector; county or municipal water resources coordinator; county or municipal pollution control director; county or municipal environmental control director; county or municipal administrator with power to grant or deny a land development permit; chief of police; fire chief; municipal clerk; appointed district school superintendent; community college president; district medical examiner; purchasing agent (regardless of title) having the authority to make any purchase exceeding \$35,000 for the local governmental unit.

5) Members of governing boards of charter schools operated by a city or other public entity.

6) The officers, directors, and chief executive officer of a corporation, partnership, or other business entity that is serving as the chief administrative or executive officer or employee of a political subdivision, and any business entity employee who is acting as the chief administrative or executive officer or employee of the political subdivision. [Sec. 112.3136, Fla. Stat.]

SPECIFIED STATE EMPLOYEE includes:

1) Employees in the Office of the Governor or of a Cabinet member who are exempt from the Career Service System, excluding secretarial, clerical, and similar positions.

2) The following positions in each state department, commission, board, or council: secretary or state surgeon general, assistant or deputy secretary, executive director, assistant or deputy executive director, and anyone having the power normally conferred upon such persons, regardless of title.

3) The following positions in each state department or division: director, assistant or deputy director, bureau chief, assistant bureau chief, and any person having the power normally conferred upon such persons, regardless of title.

4) Assistant state attorneys, assistant public defenders, criminal conflict and civil regional counsel, assistant criminal conflict and civil regional counsel, public counsel, full-time state employees serving as counsel or assistant counsel to a state agency, judges of compensation claims, administrative law judges, and hearing officers.

5) The superintendent or director of a state mental health institute established for training and research in the mental health field, or any major state institution or facility established for corrections, training, treatment, or rehabilitation.

6) State agency business managers, finance and accounting directors, personnel officers, grant coordinators, and purchasing agents (regardless of title) with power to make a purchase exceeding \$35,000.

7) The following positions in legislative branch agencies: each employee (other than those employed in maintenance, clerical, secretarial, or similar positions and legislative assistants exempted by the presiding officer of their house); and each employee of the Commission on Ethics.

What Must Be Disclosed:

FORM 1 requirements are set forth fully on the form. In general, this includes the reporting person's sources and types of financial interests, such as the names of employers and addresses of real property holdings. NO DOLLAR VALUES ARE REQUIRED TO BE LISTED. In addition, the form requires the disclosure of certain relationships with, and ownership interests in, specified types of businesses such as banks, savings and loans, insurance companies, and utility companies.

When to File:

CANDIDATES for elected local office must file FORM 1 together with and at the same time they file their qualifying papers.

STATE and LOCAL OFFICERS and SPECIFIED STATE EMPLOYEES are required to file disclosure by July 1 of each year. They also must file within thirty days from the date of appointment or the beginning of employment. Those appointees requiring Senate confirmation must file prior to confirmation.

Where to File:

Each LOCAL OFFICER files FORM 1 with the Supervisor of Elections in the county in which he or she permanently resides.

A STATE OFFICER or SPECIFIED STATE EMPLOYEE files with the Commission on Ethics. [Sec. 112.3145, Fla. Stat.]

2. *FORM 1F - Final Form 1 Limited Financial Disclosure*

FORM 1F is the disclosure form required to be filed within 60 days after a public officer or employee required to file FORM 1 leaves his or her public position. The form covers the disclosure period between January 1 and the last day of office or employment within that year.

3. *FORM 2 - Quarterly Client Disclosure*

The state officers, local officers, and specified state employees listed above, as well as elected constitutional officers, must file a FORM 2 if they or a partner or associate of their professional firm represent a client for compensation before an agency at their level of government.

A FORM 2 disclosure includes the names of clients represented by the reporting person or by any partner or associate of his or her professional firm for a fee or commission before agencies at the

reporting person's level of government. Such representations do not include appearances in ministerial matters, appearances before judges of compensation claims, or representations on behalf of one's agency in one's official capacity. Nor does the term include the preparation and filing of forms and applications merely for the purpose of obtaining or transferring a license, so long as the issuance of the license does not require a variance, special consideration, or a certificate of public convenience and necessity.

When to File:

This disclosure should be filed quarterly, by the end of the calendar quarter following the calendar quarter during which a reportable representation was made. FORM 2 need not be filed merely to indicate that no reportable representations occurred during the preceding quarter; it should be filed ONLY when reportable representations were made during the quarter.

Where To File:

LOCAL OFFICERS file with the Supervisor of Elections of the county in which they permanently reside.

STATE OFFICERS and SPECIFIED STATE EMPLOYEES file with the Commission on Ethics. [Sec. 112.3145(4), Fla. Stat.]

4. FORM 6 - Full and Public Disclosure

Who Must File:

Persons required by law to file FORM 6 include all elected constitutional officers and candidates for such office; the mayor and members of the city council and candidates for these offices in Jacksonville; the Duval County Superintendent of Schools; judges of compensation claims (pursuant to Sec. 440.442, Fla. Stat.); members of the Florida Housing Finance Corporation Board and members of expressway authorities, transportation authorities (except the Jacksonville Transportation

Authority), bridge authority, or toll authorities created pursuant to Ch. 348 or 343, or 349, or other general law.

What Must be Disclosed:

FORM 6 is a detailed disclosure of assets, liabilities, and sources of income over \$1,000 and their values, as well as net worth. Officials may opt to file their most recent income tax return in lieu of listing sources of income but still must disclose their assets, liabilities, and net worth. In addition, the form requires the disclosure of certain relationships with, and ownership interests in, specified types of businesses such as banks, savings and loans, insurance companies, and utility companies.

When and Where To File:

Officials must file FORM 6 annually by July 1 with the Commission on Ethics.

Beginning January 1, 2023, all Form 6 disclosures must be filed electronically through the Commission's electronic filing system. These disclosures will be published and searchable on the Commission's website.

CANDIDATES must register and use the electronic filing system to complete the Form 6, then file the disclosure with the officer before whom they qualify at the time of qualifying. [Art. II, Sec. 8(a) and (i), Fla. Const., and Sec. 112.3144, Fla. Stat.]

5. *FORM 6F - Final Form 6 Full and Public Disclosure*

This is the disclosure form required to be filed within 60 days after a public officer or employee required to file FORM 6 leaves his or her public position. The form covers the disclosure period between January 1 and the last day of office or employment within that year.

6. FORM 9 - Quarterly Gift Disclosure

Each person required to file FORM 1 or FORM 6, and each state procurement employee, must file a FORM 9, Quarterly Gift Disclosure, with the Commission on Ethics on the last day of any calendar quarter following the calendar quarter in which he or she received a gift worth more than \$100, other than gifts from relatives, gifts prohibited from being accepted, gifts primarily associated with his or her business or employment, and gifts otherwise required to be disclosed. FORM 9 NEED NOT BE FILED if no such gift was received during the calendar quarter.

Information to be disclosed includes a description of the gift and its value, the name and address of the donor, the date of the gift, and a copy of any receipt for the gift provided by the donor. [Sec. 112.3148, Fla. Stat.]

7. FORM 10 - Annual Disclosure of Gifts from Government Agencies and Direct-Support Organizations and Honorarium Event Related Expenses

State government entities, airport authorities, counties, municipalities, school boards, water management districts, and the South Florida Regional Transportation Authority, may give a gift worth more than \$100 to a person required to file FORM 1 or FORM 6, and to state procurement employees, if a public purpose can be shown for the gift. Also, a direct-support organization for a governmental entity may give such a gift to a person who is an officer or employee of that entity. These gifts are to be reported on FORM 10, to be filed by July 1.

The governmental entity or direct-support organization giving the gift must provide the officer or employee with a statement about the gift no later than March 1 of the following year. The officer or employee then must disclose this information by filing a statement by July 1 with his or her annual financial disclosure that describes the gift and lists the donor, the date of the gift, and the value of the total gifts provided during the calendar year. State procurement employees file their statements with the Commission on Ethics. [Sec. 112.3148, Fla. Stat.]

In addition, a person required to file FORM 1 or FORM 6, or a state procurement employee, who receives expenses or payment of expenses related to an honorarium event from someone who

is prohibited from giving him or her an honorarium, must disclose annually the name, address, and affiliation of the donor, the amount of the expenses, the date of the event, a description of the expenses paid or provided, and the total value of the expenses on FORM 10. The donor paying the expenses must provide the officer or employee with a statement about the expenses within 60 days of the honorarium event.

The disclosure must be filed by July 1, for expenses received during the previous calendar year, with the officer's or employee's FORM 1 or FORM 6. State procurement employees file their statements with the Commission on Ethics. [Sec. 112.3149, Fla. Stat.]

However, notwithstanding Sec. 112.3149, Fla. Stat., no executive branch or legislative lobbyist or principal shall make, directly or indirectly, and no executive branch agency official or employee who files FORM 1 or FORM 6 shall knowingly accept, directly or indirectly, **any expenditure** made for the purpose of lobbying. This may include gifts or honorarium event related expenses that formerly were permitted under Sections 112.3148 and 112.3149. [Sec. 112.3215, Fla. Stat.] Similar prohibitions apply to legislative officials and employees. However, these laws are not administered by the Commission on Ethics. [Sec. 11.045, Fla. Stat.] In addition, gifts, which include anything not primarily related to political activities authorized under ch. 106, are prohibited from political committees. [Sec. 112.31485 Fla. Stat.]

8. FORM 30 - Donor's Quarterly Gift Disclosure

As mentioned above, the following persons and entities generally are prohibited from giving a gift worth more than \$100 to a reporting individual (a person required to file FORM 1 or FORM 6) or to a state procurement employee: a political committee; a lobbyist who lobbies the reporting individual's or procurement employee's agency, and the partner, firm, employer, or principal of such a lobbyist; and vendors. If such person or entity makes a gift worth between \$25 and \$100 to a reporting individual or state procurement employee (that is not accepted in behalf of a governmental entity or charitable organization), the gift should be reported on FORM 30. The donor also must notify the recipient at the time the gift is made that it will be reported.

The FORM 30 should be filed by the last day of the calendar quarter following the calendar quarter in which the gift was made. If the gift was made to an individual in the legislative branch, FORM 30 should be filed with the Lobbyist Registrar. [See page 35 for address.] If the gift was to any other reporting individual or state procurement employee, FORM 30 should be filed with the Commission on Ethics.

However, notwithstanding Section 112.3148, Fla. Stat., no executive branch lobbyist or principal shall make, directly or indirectly, and no executive branch agency official or employee who files FORM 1 or FORM 6 shall knowingly accept, directly or indirectly, **any expenditure** made for the purpose of lobbying. This may include gifts that formerly were permitted under Section 112.3148. [Sec. 112.3215, Fla. Stat.] Similar prohibitions apply to legislative officials and employees. However, these laws are not administered by the Commission on Ethics. [Sec. 11.045, Fla. Stat.] In addition, gifts from political committees are prohibited. [Sec. 112.31485, Fla. Stat.]

9. FORM 1X AND FORM 6X - Amendments to Form 1 and Form 6

These forms are provided for officers or employees to amend their previously filed Form 1 or Form 6.

IV. AVAILABILITY OF FORMS

LOCAL OFFICERS and EMPLOYEES who must file FORM 1 annually will be sent the form by mail from the Supervisor of Elections in the county in which they permanently reside not later than JUNE 1 of each year. Newly elected and appointed officials or employees should contact the heads of their agencies for copies of the form or download it from www.ethics.state.fl.us, as should those persons who are required to file their final disclosure statements within 60 days of leaving office or employment. The Form 1 will be filed electronically with the Florida Commission on Ethics via the Electronic Financial Disclosure Management System (EFDMS), beginning in 2023.

Beginning January 1, 2023, ELECTED CONSTITUTIONAL OFFICERS and other officials who must file Form 6 annually must file electronically via the Commission's Electronic Financial Disclosure Management System (EFDMS). Paper forms will not be promulgated. Communications regarding the

annual filing requirement will be sent via email to filers no later than June 1. Filers must maintain an updated email address in their User Profile in EFDMS.

OTHER STATE OFFICERS, and SPECIFIED STATE EMPLOYEES who must file Form 1 annually will be sent the forms by mail from the Florida Commission on Ethics by June 1, 2023. Newly elected and appointed officers and employees should contact the head of their agencies for copies of the form or download the form from www.ethics.state.fl.us, as should those persons who are required to file their final financial disclosure statement within 60 days of leaving office or employment.

V. PENALTIES

A. Non-criminal Penalties for Violation of the Sunshine Amendment and the Code of Ethics

There are no criminal penalties for violation of the Sunshine Amendment and the Code of Ethics. Penalties for violation of these laws may include: impeachment, removal from office or employment, suspension, public censure, reprimand, demotion, reduction in salary level, forfeiture of no more than one-third salary per month for no more than twelve months, a civil penalty not to exceed \$10,000, and restitution of any pecuniary benefits received, and triple the value of a gift from a political committee.

B. Penalties for Candidates

CANDIDATES for public office who are found in violation of the Sunshine Amendment or the Code of Ethics may be subject to one or more of the following penalties: disqualification from being on the ballot, public censure, reprimand, or a civil penalty not to exceed \$10,000, and triple the value of a gift received from a political committee.

C. Penalties for Former Officers and Employees

FORMER PUBLIC OFFICERS or EMPLOYEES who are found in violation of a provision applicable to former officers or employees or whose violation occurred prior to such officer's or employee's

leaving public office or employment may be subject to one or more of the following penalties: public censure and reprimand, a civil penalty not to exceed \$10,000, and restitution of any pecuniary benefits received, and triple the value of a gift received from a political committee.

D. Penalties for Lobbyists and Others

An executive branch lobbyist who has failed to comply with the Executive Branch Lobbying Registration law (see Part VIII) may be fined up to \$5,000, reprimanded, censured, or prohibited from lobbying executive branch agencies for up to two years. Lobbyists, their employers, principals, partners, and firms, and political committees and committees of continuous existence who give a prohibited gift or honorarium or fail to comply with the gift reporting requirements for gifts worth between \$25 and \$100, may be penalized by a fine of not more than \$5,000 and a prohibition on lobbying, or employing a lobbyist to lobby, before the agency of the public officer or employee to whom the gift was given for up to two years. Any agent or person acting on behalf of a political committee giving a prohibited gift is personally liable for a civil penalty of up to triple the value of the gift.

Executive Branch lobbying firms that fail to timely file their quarterly compensation reports may be fined \$50 per day per report for each day the report is late, up to a maximum fine of \$5,000 per report.

E. Felony Convictions: Forfeiture of Retirement Benefits

Public officers and employees are subject to forfeiture of all rights and benefits under the retirement system to which they belong if convicted of certain offenses. The offenses include embezzlement or theft of public funds; bribery; felonies specified in Chapter 838, Florida Statutes; impeachable offenses; and felonies committed with intent to defraud the public or their public agency. [Sec. 112.3173, Fla. Stat.]

F. Automatic Penalties for Failure to File Annual Disclosure

Public officers and employees required to file either Form 1 or Form 6 annual financial disclosure are subject to automatic fines of \$25 for each day late the form is filed after September 1, up to a maximum penalty of \$1,500. [Sec. 112.3144 and 112.3145, Fla. Stat.]

VI. ADVISORY OPINIONS

Conflicts of interest may be avoided by greater awareness of the ethics laws on the part of public officials and employees through advisory assistance from the Commission on Ethics.

A. Who Can Request an Opinion

Any public officer, candidate for public office, or public employee in Florida who is in doubt about the applicability of the standards of conduct or disclosure laws to himself or herself, or anyone who has the power to hire or terminate another public employee, may seek an advisory opinion from the Commission about himself or herself or that employee.

B. How to Request an Opinion

Opinions may be requested by letter presenting a question based on a real situation and including a detailed description of the situation. Opinions are issued by the Commission and are binding on the conduct of the person who is the subject of the opinion, unless material facts were omitted or misstated in the request for the opinion. Published opinions will not bear the name of the persons involved unless they consent to the use of their names; however, the request and all information pertaining to it is a public record, made available to the Commission and to members of the public in advance of the Commission's consideration of the question.

C. How to Obtain Published Opinions

All of the Commission's opinions are available for viewing or download at its website:
www.ethics.state.fl.us.

VII. COMPLAINTS

A. *Citizen Involvement*

The Commission on Ethics cannot conduct investigations of alleged violations of the Sunshine Amendment or the Code of Ethics unless a person files a sworn complaint with the Commission alleging such violation has occurred, or a referral is received, as discussed below.

If you have knowledge that a person in government has violated the standards of conduct or disclosure laws described above, you may report these violations to the Commission by filing a sworn complaint on the form prescribed by the Commission and available for download at www.ethics.state.fl.us. The Commission is unable to take action based on learning of such misdeeds through newspaper reports, telephone calls, or letters.

You can download a complaint form (FORM 50) from the Commission's website: www.ethics.state.fl.us, or contact the Commission office at the address or phone number shown on the inside front cover of this booklet.

B. *Referrals*

The Commission may accept referrals from: the Governor, the Florida Department of Law Enforcement, a State Attorney, or a U.S. Attorney. A vote of six of the Commission's nine members is required to proceed on such a referral.

C. *Confidentiality*

The complaint or referral, as well as all proceedings and records relating thereto, is confidential until the accused requests that such records be made public or until the matter reaches a stage in the Commission's proceedings where it becomes public. This means that unless the Commission receives a written waiver of confidentiality from the accused, the Commission is not free to release any documents or to comment on a complaint or referral to members of the public or press, so long as the complaint or referral remains in a confidential stage.

A COMPLAINT OR REFERRAL MAY NOT BE FILED WITH RESPECT TO A CANDIDATE ON THE DAY OF THE ELECTION, OR WITHIN THE 30 CALENDAR DAYS PRECEDING THE ELECTION DATE, UNLESS IT IS BASED ON PERSONAL INFORMATION OR INFORMATION OTHER THAN HEARSAY.

D. How the Complaint Process Works

Complaints which allege a matter within the Commission's jurisdiction are assigned a tracking number and Commission staff forwards a copy of the original sworn complaint to the accused within five working days of its receipt. Any subsequent sworn amendments to the complaint also are transmitted within five working days of their receipt.

Once a complaint is filed, it goes through three procedural stages under the Commission's rules. The first stage is a determination of whether the allegations of the complaint are legally sufficient: that is, whether they indicate a possible violation of any law over which the Commission has jurisdiction. If the complaint is found not to be legally sufficient, the Commission will order that the complaint be dismissed without investigation, and all records relating to the complaint will become public at that time.

In cases of very minor financial disclosure violations, the official will be allowed an opportunity to correct or amend his or her disclosure form. Otherwise, if the complaint is found to be legally sufficient, a preliminary investigation will be undertaken by the investigative staff of the Commission. The second stage of the Commission's proceedings involves this preliminary investigation and a decision by the Commission as to whether there is probable cause to believe that there has been a violation of any of the ethics laws. If the Commission finds no probable cause to believe there has been a violation of the ethics laws, the complaint will be dismissed and will become a matter of public record. If the Commission finds probable cause to believe there has been a violation of the ethics laws, the complaint becomes public and usually enters the third stage of proceedings. This stage requires the Commission to decide whether the law was actually violated and, if so, whether a penalty should be recommended. At this stage, the accused has the right to request a public hearing (trial) at which evidence is presented, or the Commission may order that such a hearing be held. Public hearings usually are held in or near the area where the alleged violation occurred.

When the Commission concludes that a violation has been committed, it issues a public report of its findings and may recommend one or more penalties to the appropriate disciplinary body or official.

When the Commission determines that a person has filed a complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations, the complainant will be liable for costs plus reasonable attorney's fees incurred by the person complained against. The Department of Legal Affairs may bring a civil action to recover such fees and costs, if they are not paid voluntarily within 30 days.

E. Dismissal of Complaints At Any Stage of Disposition

The Commission may, at its discretion, dismiss any complaint at any stage of disposition should it determine that the public interest would not be served by proceeding further, in which case the Commission will issue a public report stating with particularity its reasons for the dismissal. [Sec. 112.324(12), Fla. Stat.]

F. Statute of Limitations

All sworn complaints alleging a violation of the Sunshine Amendment or the Code of Ethics must be filed with the Commission within five years of the alleged violation or other breach of the public trust. Time starts to run on the day AFTER the violation or breach of public trust is committed. The statute of limitations is tolled on the day a sworn complaint is filed with the Commission. If a complaint is filed and the statute of limitations has run, the complaint will be dismissed. [Sec. 112.3231, Fla. Stat.]

VIII. EXECUTIVE BRANCH LOBBYING

Any person who, for compensation and on behalf of another, lobbies an agency of the executive branch of state government with respect to a decision in the area of policy or procurement may be required to register as an executive branch lobbyist. Registration is required before lobbying an agency and is renewable annually. In addition, each lobbying firm must file a compensation report

with the Commission for each calendar quarter during any portion of which one or more of the firm's lobbyists were registered to represent a principal. As noted above, no executive branch lobbyist or principal can make, directly or indirectly, and no executive branch agency official or employee who files FORM 1 or FORM 6 can knowingly accept, directly or indirectly, **any expenditure** made for the purpose of lobbying. [Sec. 112.3215, Fla. Stat.]

Paying an executive branch lobbyist a contingency fee based upon the outcome of any specific executive branch action, and receiving such a fee, is prohibited. A violation of this prohibition is a first degree misdemeanor, and the amount received is subject to forfeiture. This does not prohibit sales people from receiving a commission. [Sec. 112.3217, Fla. Stat.]

Executive branch departments, state universities, community colleges, and water management districts are prohibited from using public funds to retain an executive branch (or legislative branch) lobbyist, although these agencies may use full-time employees as lobbyists. [Sec. 11.062, Fla. Stat.]

Online registration and filing is available at www.floridalobbyist.gov. Additional information about the executive branch lobbyist registration system may be obtained by contacting the Lobbyist Registrar at the following address:

Executive Branch Lobbyist Registration
Room G-68, Claude Pepper Building
111 W. Madison Street
Tallahassee, FL 32399-1425
Phone: 850/922-4987

IX. WHISTLE-BLOWER'S ACT

In 1986, the Legislature enacted a "Whistle-blower's Act" to protect employees of agencies and government contractors from adverse personnel actions in retaliation for disclosing information in a sworn complaint alleging certain types of improper activities. Since then, the Legislature has revised this law to afford greater protection to these employees.

While this language is contained within the Code of Ethics, the Commission has no jurisdiction or authority to proceed against persons who violate this Act. Therefore, a person who has disclosed information alleging improper conduct governed by this law and who may suffer adverse consequences as a result should contact one or more of the following: the Office of the Chief Inspector General in the Executive Office of the Governor; the Department of Legal Affairs; the Florida Commission on Human Relations; or a private attorney. [Sec. 112.3187 - 112.31895, Fla. Stat.]

X. ADDITIONAL INFORMATION

As mentioned above, we suggest that you review the language used in each law for a more detailed understanding of Florida's ethics laws. The "Sunshine Amendment" is Article II, Section 8, of the Florida Constitution. The Code of Ethics for Public Officers and Employees is contained in Part III of Chapter 112, Florida Statutes.

Additional information about the Commission's functions and interpretations of these laws may be found in Chapter 34 of the Florida Administrative Code, where the Commission's rules are published, and in The Florida Administrative Law Reports, which until 2005 published many of the Commission's final orders. The Commission's rules, orders, and opinions also are available at www.ethics.state.fl.us.

If you are a public officer or employee concerned about your obligations under these laws, the staff of the Commission will be happy to respond to oral and written inquiries by providing information about the law, the Commission's interpretations of the law, and the Commission's procedures.

XI. TRAINING

Constitutional officers, elected municipal officers, and commissioners of community redevelopment agencies (CRAs) are required to receive a total of four hours training, per calendar year, in the area of ethics, public records, and open meetings. The Commission on Ethics does not

track compliance or certify providers. Officials indicate their compliance with the training requirement when they file their annual Form 1 or Form 6.

Visit the training page on the Commission's website for up-to-date rules, opinions, audio/video training, and opportunities for live training conducted by Commission staff.