IRL COUNCIL

OVERVIEW OF FLORIDA’S SUNSHINE, PUBLIC RECORDS AND ETHICS LAWS

By: Carolyn Ansay
Florida’s Government in the Sunshine Law  
Section 286.011, Florida Statutes

I. **Scope:**

A. Provides the right of access to governmental proceedings at the state and local level.

B. Applies to any gathering, whether formal or casual, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by the public board or commission.

C. Three basic requirements:
   1. Meetings must be open to the public;
   2. Reasonable notice of such meetings must be given; and
   3. Minutes of the meetings must be taken.

II. **Those Covered by the Sunshine Law:**

A. “[A]ny board or commission of any state agency or authority or of an agency or authority of any county, municipal corporation, or political subdivision”.

B. Advisory boards created pursuant to law or ordinance or otherwise established by public agencies are subject to the Sunshine Law even though their recommendations are not binding upon the entities that create them.

C. Committees established for fact-finding activities (i.e., strictly information gathering and reporting) may be exempt from the Sunshine Law.

D. Private entities created pursuant to law or by public agencies or which performs acts on behalf of a governmental entity may be subject to the Sunshine Law.

E. Meetings of staff of boards or commissions covered by the Sunshine Law are not ordinarily subject to the Sunshine Law, but may depend on nature of “act” performing.

III. **Meetings Include:**

A. Both formal and casual meetings of two or more board members;

B. Written correspondence between board members with comments being provided to other members;
C. Telephone conversations between two or more board members; and,
D. Meeting of liaisons of two or more board members.

IV. **Discussions Covered by the Sunshine Law:**

A. Formal, informal discussions and workshop sessions;
B. Legal matters unless pending litigation (very specific application and steps must be taken);
C. Personnel matters with certain exemptions (e.g., some collective bargaining sessions).

V. **Miscellaneous Application Issues:**

A. Social events are not governed by the Sunshine Law so long as matters which may come before the board or commission are not discussed BUT avoid them anyway;
B. Request for certain members of the public to voluntarily leave a meeting may be a violation of the Sunshine Law especially if requested by a board or commission member;
C. Secret ballots during a meeting may violate the Sunshine Law;
D. Consequences for violating the Sunshine Law include:
   1. Criminal penalties;
   2. Removal from office;
   3. Non-criminal infractions (AGO);
   4. Civil actions for injunctive or declaratory relief;
   5. Attorney’s fees; and
   6. Action taken in violation of law is void *ab initio*;
E. Sunshine Law violations may be cured by independent, final action taken completely in the Sunshine.
Florida's Public Record Law
Chapter 119, Florida Statutes

I. Scope:
   A. Provides the right of inspection and copying of all documents, letters, photos, recordings, software and other materials (including draft some documents) made or received pursuant to law or ordinance or in connection with the transaction of official business by an agency.
   B. “Agency” under Chapter 119 includes municipal officers, departments, divisions, boards, bureaus or other separate unit of government created or established by law and any other public or private entity acting on behalf of any public agency.

II. A Request and the Agency’s Response:
   A. A request does not need to be in writing and no background information on the requester is required to be disclosed.
   B. The custodian, which includes all agency personnel who have it within their power to release or communicate public records, is responsible for responding to a public records request.
   C. The response must be made in a “reasonable” amount of time to allow the custodian to retrieve the record and delete any exempt material.
   D. If some or all of the requested public records contains exempt material, the custodian must advise the requester of the basis for his or her refusal to release the exempt material.
   E. Exempt material must be removed (redacted) from the requested records and the remainder of the record (if any) released.
   F. Fees may be charged for responding to a request (see IV. below).
   G. Agencies are Not Required to:
      1. Answer questions about their records; or
      2. Reformat or create new records to respond to a request.
   H. Agencies may dispose of public records in accordance with the retention schedules provided by the Department of State Division of Library and Information Services.
III. Exemptions to the Public Records Law:

A. Information that is claimed to be exempt from release must be based on a provision of general law which provides that a specific record or portion thereof is not subject to Chapter 119, F.S.

B. Exemptions include (but are not limited to):

1. Some active criminal investigation records;
2. Home addresses, telephone numbers, social security numbers, etc. of certain agency personnel (e.g., police personnel, HR personnel and code enforcement officers);
3. Attorney Work Product (limited exemption);
4. Medical information; and,
5. Retirees’ names and addresses.

IV. Fees:

A. Fees may only be charged for the actual duplication costs to the agency.

B. The custodian may charge up to 15 cents per one-sided copies that are 14 x 82 or less and 20 cents for two-sided copies.

C. The custodian may charge $1.00 per copy of certified copies.

D. Special service charge may be assessed if responding to a request will require extensive use of clerical or supervisory labor or extensive information technology resources by the agency.

E. A reasonable deposit or advance payment may be requested.

V. Remedies to Enforce Public Records Law:

A. Civil action for the public records with award of attorney’s fees.

B. Criminal penalties for knowingly violating the law.
Florida’s Code of Ethics for Public Officers and Employees
Chapter 112, Florida Statutes

I. Scope:

A. Provides two types of provisions:
   1. Provisions prohibiting certain actions; and
   2. Provisions requiring certain disclosures be made to the public.

B. Generally applies to all public officers and employees, state and local, including members of advisory bodies.

II. Prohibited Actions or Conduct:

A. Soliciting and accepting anything of value based on an understanding that their vote, official action, or judgment would be influenced by such gift.

   1. This includes gifts, loan, promise of employment and more.

   2. Those required to file FORM 1 (see Section IV below) are prohibited from soliciting gift from certain political committees and lobbyists and accepting gifts worth over $100 from certain political committees and lobbyists.

B. Accepting of any compensation, payment or anything of value if they know or reasonably should know it is given to influence their vote or official action, including acceptance by the spouse and/or minor child of officers and employees.

C. Corruptly using or attempting to use their official position to obtain a special privilege for themselves or others.

D. Disclosing or using certain information not available to the public and obtained by reason of their public position for personal benefit of themselves or others.

E. Soliciting honorarium related to one’s public duties (FORM 1 filers).

F. When acting as a purchasing agent or public officer, purchasing anything from his or her own business which the employee or officer (or spouse or child thereof) owns more than five percent interest.

G. Holding any contract with a business entity regulated or doing business with his or her public agency.
H. Holding any contractual relationship which will create frequent conflicts or may impede the faithful discharge of public duties.

I. Participating in any matter which would inure to the officer’s or other’s special gain or loss without first disclosing the nature of the officer’s interest in the matter. Form 8A or 8B must be filed with designated official.

III. Exemptions to Prohibited Actions or Conduct:

A. The business is equally rotated among qualified suppliers.

B. The business is awarded by sealed bids (with disclosure by a public official as to any interest he or she owns prior to or at time of bid submission.

C. An emergency purchase is made to protect public health, safety or welfare.

D. The aggregate of such transaction does not exceed $500 per calendar year.

IV. Required Disclosures:

A. Form 1 - Limited Financial Disclosure is required by all local officers, candidates for local elective office, members appointed to certain boards of the local government and some employees (with Form 1F upon leaving).

B. Form 2 – Quarterly Client Disclosure is required if they or their firm represents a client for compensation before an agency at their level of government.

C. Other Forms as may be applicable (e.g., Form 9 – Quarterly Gift Disclosure).

V. Enforcement and Penalties:

A. Commission on Ethics investigates and makes recommendations regarding complaints of alleged violations and provides advisory opinions.

B. Violators may face non-criminal penalties such as removal from office, suspension, public censure, demotion, reduction in salary and forced to pay penalties and/or restitution of any benefits received.

C. Associated criminal offenses (e.g., embezzlement or theft of public funds, bribery, felonies committed with intent to defraud the public, etc.).

D. Automatic penalties for failure to file annual disclosure form:

1. $25 for each day late;
2. Maximum penalty of $1,500.