

## I. THE FLORIDA SUNSHINE LAW

The main provision of the Sunshine Law, Section 286.011(1), Florida Statutes (2010), reads as follows:

All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are to be declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of such meeting.

The Sunshine law “equally binds all members of governmental bodies, be they advisory members or elected officials,” and the requirements apply to “every step in the decision-making process” of an agency. The Sunshine Law applies to the School Board.

For purposes of this memorandum, we are considering only the School Board. This memorandum does not address issues that may arise concerning the application of the Sunshine Law to committees appointed by the Superintendent as the chief executive officer of the school system or committees formed solely for fact-finding.

### A. Substantive Requirements of the Law

1. All meetings must be open to the public.
2. Minutes of each meeting must be promptly recorded, and open to public inspection. There is no requirement that tape recordings be made. However, once made, such recordings are public records. (see *below*, The Florida Public Records Act)
3. Meetings may not be held at any facility or location which discriminates on the basis of gender, race, color, religion, ethnic or national origin, political beliefs, marital status, age, sexual orientation, social and family background, linguistic preference, disability, or economic status or that operates in such a manner as to unreasonably restrict public access to such a facility.
4. There are no exemptions or exceptions for “organizational meetings,” “briefing sessions,” “workshops,” “informal discussions,” or other meetings no matter what they may be called.

5. No two or more members may meet and discuss any matter on which foreseeable action will be taken by the committee without meeting the requirements of the Sunshine Law.
6. The Sunshine Law applies not just to in-person meetings but to certain electronic communications among members of a committee, including the use of e-mail to discuss committee business.
7. Members are not prohibited under the Sunshine Law from meeting together socially, provided that matters which may come before the board or commission are not discussed at such gatherings.
8. The law provides severe sanctions and penalties in the event of violations by a committee, or by individuals. Upon proof, a court can invalidate committee action taken in violation of the Sunshine Law, assess attorney's fees against the School Board and against committee members, and impose criminal penalties against committee members.

B. Procedural Requirements of the Law

1. "Reasonable notice" of meetings must be given to the public in advance and should include the date, time and place of the meeting, and an agenda or list of subjects to be considered, if available. Generally, "reasonable notice" means five (5) working days prior to the date of the meeting. See School Board Rule 6Gx13- 8C-1.031, *District Advisory Committee Meeting Notices/Announcement and Procedures for Publication*, for additional information.
2. The notice should be prominently displayed in the area in the agency's offices set aside for that purpose. The use of press releases and phone calls to the wire services and media is highly effective. On matters of critical public concern, advertising in local newspapers would be appropriate.
3. The following statement should appear on every notice of a meeting:  
  
"IF A PERSON WISHES TO APPEAL ANY DECISION MADE WITH RESPECT TO ANY MATTER CONSIDERED AT THIS MEETING OR (HEARING), SUCH A PERSON SHOULD ENSURE THE PREPARATION OF A VERBATIM RECORD OF THE PROCEEDINGS INCLUDING THE

TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.”

4. Votes must be recorded or counted for each member present at a meeting. This does not require a roll call vote on every subject, and voting by “ayes” and nays” is permissible. Voting by written ballot is also permitted as long as the votes are made openly at a public meeting and the ballots are maintained and made available for public inspection. Secret ballots are not permitted.

## **II. THE FLORIDA PUBLIC RECORDS ACT**

Section 119.011(1), Florida Statutes (2010), defines “public records” to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

Unless a statutory exemption applies, any and all records “made or received,” and used to perpetuate, communicate or formalize knowledge, in connection with the business of the School Board are subject to inspection by any person upon request and upon reasonable notice. Notes and nonfinal drafts of committee business, if circulated for review, comment or information, are public records.

The motive of the person requesting access to records is irrelevant, and no reason need be given. The possibility that disclosure of records may cause embarrassment or annoyance is not a ground for refusing access. The Board Attorney’s Office will assist if specific questions arise.

Copies of records must be furnished if requested. The request for a public record need not be in writing. Charges for photocopies shall be collected pursuant to School Board Rule 6Gx13- 8C-1.18, *Public Access to School District Records*; Section 119.07(1)(a), Florida Statutes (2009).

## **III. THE CODE OF ETHICS OF PUBLIC OFFICERS AND EMPLOYEES**

The Code of Ethics is embodied in Part III of the Chapter 112, Florida Statutes. It specifically covers the School Board and its “advisory bodies” which are defined as “any board, commission, committee, council, or authority, however selected, whose total budget, appropriations, or authorized expenditures constitute less than 1 percent of the

budget of each agency it serves or \$100,000, whichever is less, and whose powers, jurisdiction, and authority are solely advisory and do not include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relating to its internal operations.” Section 112.312(1), Florida Statutes (2010).

A. Board members are required to file financial disclosure and gift statements. Fla. Stat. §§ 112.313(2), 112.3148 and 112.3149.

B. The following provisions of the Code are binding on School Board members:

1. Members 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. Section 112.313(2), Florida Statutes (2010).
2. Members are prohibited from accepting compensation, knowing or having reason to know that it was given to influence a vote or action.
3. Members are prohibited from using their official position to secure a special privilege, benefit, or exemption for oneself or others.
4. Members are prohibited from using information gained that is not available to the general public for personal gain or benefit of another.

C. Several other restrictions apply to School Board members, but are subject to exemptions or waiver as explained below:

1. The sale, rent, or lease by a member, of any realty, goods or services to the School Board are prohibited. Contracts existing at the time of appointment are not affected.
2. The purchase, rent or lease by a member for the School Board of any realty, goods, or services from a business of which the member is an officer, partner, director, or proprietor, or in which the member or the member’s spouse or child owns a material interest, are prohibited. Again, contracts existing at the time of appointment are not affected.

3. A member is prohibited from holding any employment or contractual relationship with any business entity or agency which is doing business with the School Board.
4. A member is prohibited from holding any employment or contractual relationship “that will create a continuing or frequently recurring conflict between his private interests and the performance of his public duties or that would impede the full and faithful discharge of his public duties.”

Exemptions from the above listed requirements are provided for businesses submitting sealed competitive bids (certain conditions must be met); for legal advertising, utilities service, or passage on a common carrier; for emergency purchases and contracts; for businesses which are sole sources of supply; and for transactions not exceeding a total of \$500 in a calendar year.

In addition, the statute provides that these requirements may be waived as to an advisory board member in a particular instance by the body or individual who appointed the member. In either situation there must be full disclosure by the member of the transaction or relationship giving rise to the possible conflict, and an affirmative vote in favor of the waiver by two-thirds of the appointing body, or a determination in favor of the waiver by the appointing individual after a public hearing.

These various standards of conduct are not easy to interpret as applied to different factual situations. Any Board member who may have doubts about the applicability of any provision of the Code of Ethics to his or her personal circumstances is entitled to submit the facts of the situation in writing to the Commission on Ethics and request an advisory opinion. The Commission is empowered to render binding opinions interpreting the Code of Ethics, and an advisory opinion is, therefore, the best method by which a Board member can obtain a resolution of a problem involving possible conflict of interest as to which no exemption clearly applies and no waiver has been granted.

D. A Board member may not abstain from voting on any issue, except when he or she appears to have a conflict of interest, in the sense of the language quoted below. In such a case, the member must abstain, and make the disclosure required by Section 112.3143(3)(a):

No county, municipal, or other local public officer shall vote in his or her official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gains or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s.

112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associated of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

The term "special private gain or loss" is not easily defined. It is our opinion that the term refers to potential business, monetary gain, or profit, rather than simple friendship or personal relationship with school personnel or students or person dealing with the school system. When in doubt, a School Board member can and should abstain, and follow the disclosure requirement. The written disclosure referred to in the statute should be made on Form 8B published by the Florida Commission on Ethics.

E. In addition to the voting abstention and disclosure required as described above, the law requires a separate disclosure by a Board member having a conflict who intends to make any attempt to influence the decision of the committee on the measure in question. In other words, a member having a conflict may participate in such a matter, but if the member does so, or intends to do so, either by oral or written communication, the separate prior disclosure must be made. This written disclosure must be provided to other Board members and must be publicly read at the meeting prior to consideration of the matter. The affected member may then debate the matter, but must abstain from voting and file another Form 8B as stated in the preceding paragraph. This separate disclosure requirement is confusing and burdensome, but must be observed.