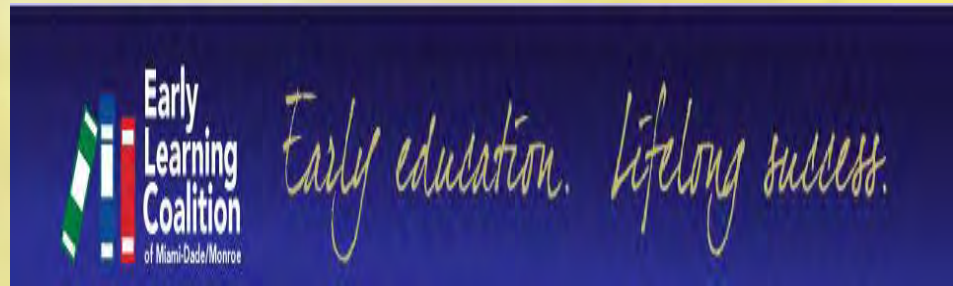


# MIAMI-DADE COMMISSION ON ETHICS

## EARLY LEARNING COALITION OF MIAMI-DADE/MONROE, INC. ETHICS BRIEFING

**APRIL 14, 2014**



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Miami-Dade County  
Commission on Ethics and Public Trust

**STATE OF FLORIDA**  
**GOVERNMENT-IN-THE-**  
**SUNSHINE LAW**



**Section 286.011, Florida**  
**Statutes**

# **THE SUNSHINE LAW**

Applicable to ELC Under Article VII, Section 7.2 of ELC By-laws

F.S.286.011(1)

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 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 SUNSHINE LAW: CONSTRUCTION

“The statute should be construed so as to frustrate all evasive devices. This can be accomplished only by embracing the collective inquiry and discussion stages within the terms of the statute, as long as such inquiry and discussion is conducted by any committee or other authority appointed and established by a governmental agency, and relates to any matter on which foreseeable action will be taken.”

Justice Adkins in *Town of Palm Beach v. Gradison*, 296 So 2d 473 (Fla. 1974)

# **THE SUNSHINE LAW: BASIC REQUIREMENTS**

1. Meetings must be open to the public.
2. Reasonable notice of the meetings must be given.
3. Minutes of meetings must be taken.



# THE SUNSHINE LAW: THE “PER SE” BOARD MEETING

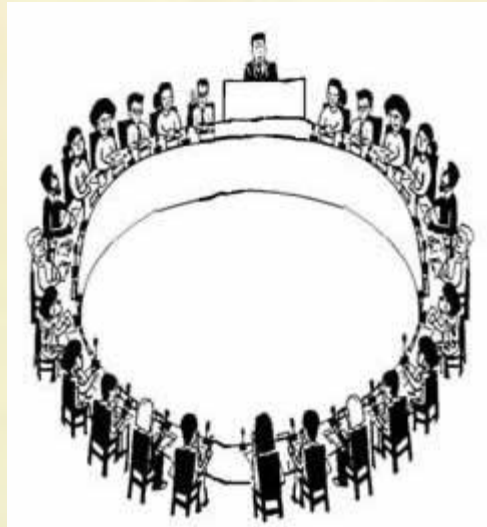
“In order for their to be a violation of F.S. 286.011, F.S.A., a meeting between TWO OR MORE public officials must take place which violates the spirit, intent, and purpose. The obvious intent of the [Sunshine Law] was to cover any gathering of some of the members of a public board where members discuss some matters on which foreseeable action may be taken by the board “ (Emphasis added)

*Hough v. Stenbridge*, 278 So.2d 288 (Fla. 3<sup>rd</sup> DCA 1973)



# THE SUNSHINE LAW: EX OFFICIO MEMBERS

*Ex Officio* non-voting members of a public board are subject to the same Sunshine Law restrictions as other members. CEO 05-18



# THE SUNSHINE LAW: ONE-WAY COMMUNICATION

## Oral Communications

- The Sunshine Law prohibits one-way oral communications between board members, i.e., where one party speaks and the second party does not respond

## Electronic or Written Communications

- A one-way electronic or written communication by a board member is permissible if it is kept as a public record and there is no response to it from another board member except at a public meeting.
- The Sunshine law prohibits electronic or written two-way communications between two board members about board business.





# THE SUNSHINE LAW: LIAISON

- It is not permissible to intentionally communicate to another board member through a third party
- It is inevitable that some unintentional communication through third parties will occur, e.g., media, office gossip
- Violation depends on “intent” of the communicator



# SUNSHINE LAW VIOLATIONS : CONSEQUENCES

- Criminal Penalties for “knowingly” violating the Sunshine Law
  - Up to 60 days in jail and/or \$500 fine
  - Removal from office at the discretion of the Governor
- Non-Criminal Penalty – up to \$500 fine
- Action taken in violation of Sunshine Law is void *ab initio*

# **STATE OF FLORIDA PUBLIC RECORDS LAW**



## **CHAPTER 119, FLORIDA STATUTES**

# PUBLIC RECORDS: DEFINED

F.S. 119.011(1)

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



# PUBLIC RECORDS: CUSTODIAN

F.S. 119.07(1)(a)

Every person who has custody of a public record shall permit the records to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records or his designee....



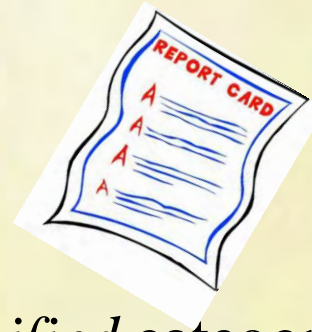


# PUBLIC RECORDS: SCOPE

- Public has right of access to the records of state and local governments as well as to private entities acting on their behalf.
- In the absence of statutory exemption, this right of access applies to all materials made or received by an agency in connection with the transaction of official business which are used to perpetuate, communicate or formalize knowledge.  
*Shevin v. Byron Harless, Schaffer, Reid and Associates*, 379 So. 2d 633, 640 (Fla. 1980)

# PUBLIC RECORDS LAW: Exemptions

- All exemptions strictly construed
- Active criminal investigative and intelligence records
- Active commission on ethics and inspector general investigations
- Active Whistleblower investigations
- Patient medical records
- Student records
- Social security records
- Bank account numbers
- Personal information of *specified* categories of public officials and employees



# **PUBLIC RECORDS LAW VIOLATIONS: CONSEQUENCES**



- Criminal Penalties

A public officer who “knowingly” violates the provisions of F.S. 119.07(1) is subject to suspension and removal or impeachment and is guilty of a misdemeanor of the first degree, punishable by up to one year in prison, or \$1,000 fine, or both.

- Civil Actions

- A petitioner who claims to have been denied the right to inspect and/or copy public records is entitled to an immediate hearing.
- Attorney’s fees are recoverable by the petitioner even where access is denied on a good faith but mistaken belief that the documents are exempt from disclosure.

- Mediation By Office Of Attorney General, F.S. 16.60



## **Florida Statutes Adopted in ELC By-Laws, Art. XIII**

- **Section 112.313 – Standards of Conduct for Public Officers, Employees of Agencies, and Local Government Attorneys**
- **Section 112.3135 – Nepotism**
- **Section 112.3143 – Voting Conflicts**



## **GENERAL PROHIBITION ON SOLICITATION OR ACCEPTANCE OF GIFTS F.S. 112.313(2)**



- 1) No public officer, employee of an agency, local government attorney, or candidate for nomination or election
- 2) shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service
- 3) based upon any understanding that the vote, official action, or judgment of that person would be influenced thereby.

Note: The above may also constitute Felony Bribery





*Early education. Lifelong success.*

## UNAUTHORIZED COMPENSATION, F.S. 112.313(4)

- 1) No public officer, employee, local government attorney or his or her spouse or minor child
- 2) shall accept any compensation, payment or thing of value
- 3) if such public officer employee or local government attorney **“knows, or, with the exercise of reasonable care, should know”**
- 4) that it was given to influence a vote or other action in which the officer, employee or local government attorney was expected to participate in his or her official capacity
  - Example: DCF employee accepted \$100 to participate in a survey about a company doing business with the department (CEO 01-2)





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## MISUSE OF PUBLIC POSITION, F.S. 112.313(6)



- Prohibition against **corruptly** using or attempting to use one's official position or any property or resources within one's trust, or performing one's official duties, to secure a special privilege, benefit, or exemption for oneself or another
- "Corruptly" means done with a wrongful intent and for the purpose of obtaining a benefit from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties. F.S. 112. 312 (9)
- Example: Use of publicly-owned facilities or equipment to operate a private business or for political campaign purposes



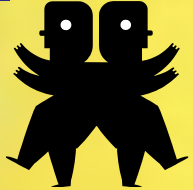
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## **NEPOTISM, F. S. 112.3135**

- Prohibits a public official from appointing, employing, promoting a relative or advancing same
- “Relative” includes immediate family, aunt, uncle, niece, nephew, in-law, first cousin, but not fiance or household member
- Relative of a board member may not be appointed by the board, regardless of whether the related board member participates in the appointment
- Delegation of authority to hire, promote or advance does not avoid statutory prohibition
- Applies to paid and unpaid positions, CEO 95-12







## VOTING CONFLICTS

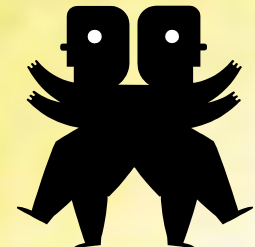
### ELC By-Laws, Article V, Section 5.13

- No Member may participate or vote upon any measure which would inure to such Member's special private gain or loss (including a Member's relatives, as defined in Florida Statutes (Sec. 112.3143) or that of the principal whom such Member represents.
- All Members shall make known through verbal or written communication to the Coalition Members and the Chair all possible or **apparent** conflicts and refrain from voting and/or participating in actions to be taken on an item on which such Member has a conflict of interest.
- "Relative" includes father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, daughter-in-law but not brother-in-law or sister-in-law, F.S. 112.3143(1)(c)
- "Special private gain or loss" relates to size of class benefited; degree to which interests of all members of a class are affected; uniqueness of benefit to the official or other designated person, F.S. 112.3143(1)(d)

# VOTING CONFLICTS

## **ELC By-Laws Section Art. V. 5.10.2**

- Each voting member, for the purposes of section 12.3143(3)(a), F.S., is considered a local public officer and must disclose, in accordance with the provisions of section 112.3143(3)(a), F.S., the nature and extent of any conflict of interest and abstain from voting or participating when a conflict of interest exists.
- Furthermore, no voting member shall participate in the selection, award and administration of a contract if a real or **apparent** conflict of interest would be involved



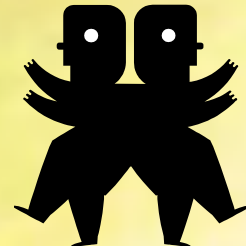


## VOTING CONFLICTS

### **Section 112.3143, Florida Statutes**

Requires voting member to

- 1) Announce the conflict publicly prior to vote
- 2) Abstain
- 3) File Form 8B with clerk within 15 days





# Members of the Ethics Commission

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- Nelson Bellido, Chair
  - Hon. Lawrence A. Schwartz, Vice-Chair
  - Dawn Addy
  - Charlton Copeland
  - Kerry E. Rosenthal
- 
- Joseph M. Centorino, Executive Director and General Counsel

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