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# Government in the Sunshine:

The Basics for Public Officials and Employees

*Presented by:*

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# Oath of Office for Public Officials

Section 5(b), Art. II, State Const., provides generally as follows:

- 'I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; and the Charter of the City of Tarpon Springs; that I am duly qualified to hold office under the Constitution of the state and Charter of the City of Tarpon Springs; and that I will well and faithfully perform the duties of (title of office) on which I am now about to enter. So help me God.'

# What is Government in the Sunshine?

- Public Access
  - Transparency
  - Florida Constitution, Article I, Section 24(b)
  - Section 286.011, Florida Statutes
-

## Basic Requirements

- Meetings of public boards or commission must be open to the public
  - Reasonable notice of such meetings must be given
  - Minutes of the meetings must be taken
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## What is a meeting?

- Formal or informal gathering of two or more
  - Discussing a matter which will foreseeably come before them for a formal decision
- A writing reflecting views on a particular action.
- Telephone conversation.
- Any communication, electronic, telephonic or otherwise.



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## What is “open to the public”?

- Facilities: accessible and adequate
- No inaudible discussions
- The public has a right to be present and to be heard.

## Exceptions to Sunshine Meetings:

- Labor negotiations and collective bargaining
  - Risk management issues
  - Security systems and advice
  - Shade meetings
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## Shade Meeting Requirements:

1. Attorney advises the body at a public meeting to request a shade meeting
2. Subject matter confined to the litigation.
3. Entire session recorded by court reporter.
4. Reasonable public notice: date, time, THOSE ATTENDING.
5. Transcript becomes public at the conclusion of the litigation.



## Public Records Law

- Florida Constitution, Article I,  
Section 24(a)
  - Chapter 119, Florida Statutes
-

## *A Public Record is...*

Any 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 an agency.

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*A Public Record is...*

- Any material
- Prepared in connection with official agency business
- Intended to perpetuate, communicate, or formalize knowledge.



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## Florida's Ethics Laws

### "A Public Office is a Public Trust"

- Purpose and Application

Regulations:

- Article II, Section 8, Florida Constitution
- Part III, Chapter 112, Florida Statutes
- Florida Commission on Ethics



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# Amendment 12

- Lobbying Restrictions
  - Abuse of Public Position
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# Abuse of Public Position

- Effective December 31, 2020
  - Required Commission to define “disproportionate benefit” by rule
  - Required to specify intent
  - Enacted under Rule 34-18.001, Florida Admin. Code
    - Effective September 30, 2019
  - Penalties Enacted



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## Rule 34.18.001, Florida Administrative Code

- Six Factors
  - The number of those who benefit
  - Connection to the public official
  - Nature of the benefit
  - Degree of the benefit
  - Certainty of the outcome
  - Similarly situated individuals
- Intent: inconsistent with the performance of public duties.



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## Chapter 112, Florida Statutes

- Prohibited Conduct
- Voting Conflicts
- Prohibited Business and Employment Practices
- Financial Disclosure Basics





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## Prohibited Conduct

- Solicitation or acceptance of Gifts or Honoraria
  - F.S. § 112.313(2)
  - F.S. § 112.3149
- Unauthorized Compensation
  - F.S. § 112.313(4)
- Misuse of Public Position
  - F.S. § 112.313(6)
- Disclosure or Use of Certain Information
  - F.S. § 112.313(8)



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# Prohibited Employment and Business Practices

- Dual Office Holding
  - Art. II, § 5 Fla. Const.
- Conflicting Employment or Contractual Relationships
  - F.S. § 112.313(7)
- Doing Business with One's Own Agency
  - F.S. § 112.313(3)
- Anti - nepotism
  - F.S. § 112.3135



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## Voting Conflicts

- F.S. § 112.3143
- Disclosure Required
  - State Form
  - Minutes of Subsequent Meeting



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## Requesting an Ethics Opinion

- Who can request an opinion?
- How to request an opinion?
- What is the effect of published opinions?



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## Filing an Ethics Complaint

- Who can file?
- How does the investigation process work?
- What happens after the Report and Recommendation is issued?



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## Penalties Adopted

- F.S. § 112.317(1)(a)
  - Impeachment
  - Removal from office
  - Suspension from office
  - Public censure and reprimand
  - Forfeiture of no more than one-third of his or her salary per month for a period not to exceed 12 months
  - A civil penalty not to exceed \$10,000.00
  - Restitution of pecuniary benefits

## Penalties for violation of Sunshine Law:

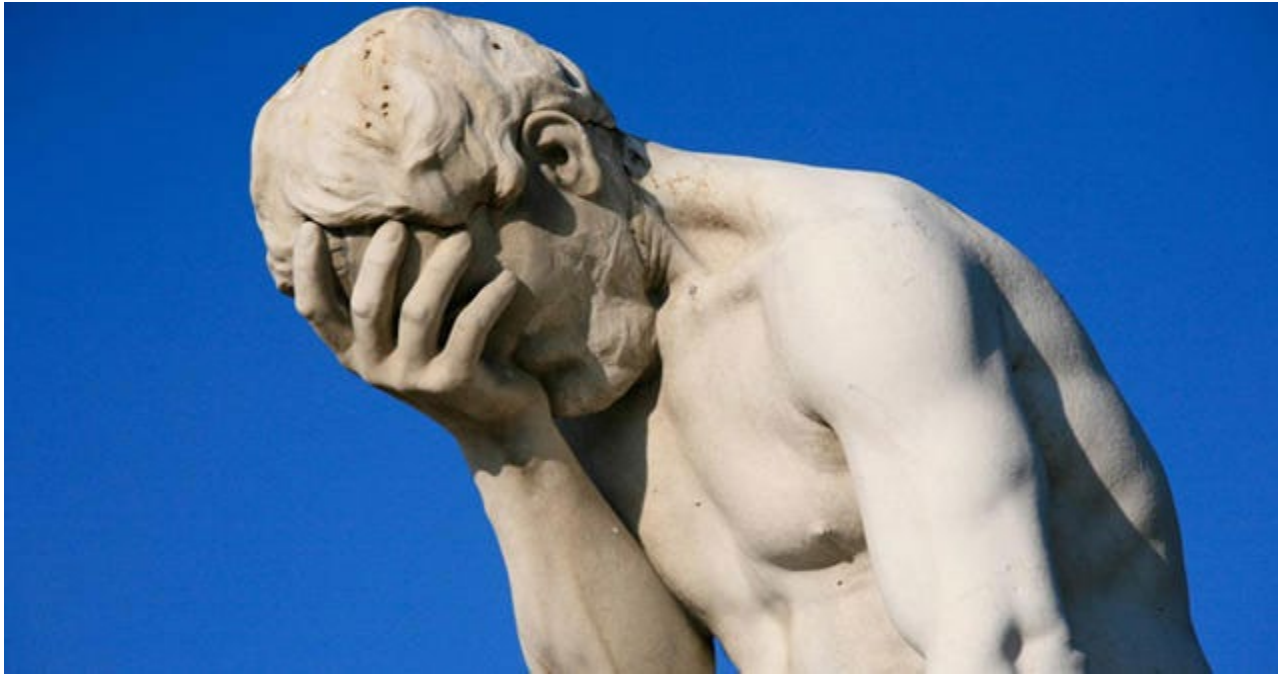
- A knowing violation constitutes a 2<sup>nd</sup> degree misdemeanor, punishable by 60 days in jail and/or \$500.00 fine.
- Non-criminal infractions, committed without the requisite knowledge, punishable by \$500.00 fine
- Both pursued by the State Attorney's Office.
- Any action taken in violation of Sunshine Law is void *ab initio*.

*Penalties for Violation of Public Records:*

- For any violations of Chapter 119, \$500.00 fine.
- For a willful and knowing violation, subject to suspension, removal or impeachment.
  - 1<sup>st</sup> Degree misdemeanor (up to one year in jail).



## *Criminal Conduct in Office*



## Fla. Stat. § 837.06

### False Official Statements

“Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.”

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# Fla. Stat. § 838.014

## Definitions

As used in this chapter, the term: (1) **“Benefit”** means gain or advantage, or anything regarded by the person to be benefited as a gain or advantage, including the doing of an act beneficial to any person in whose welfare he or she is interested, including any commission, gift, gratuity, property, commercial interest, or any other thing of economic value not authorized by law.

(2) **“Bid”** includes a response to an “invitation to bid,” “invitation to negotiate,” “request for a quote,” or “request for proposals” as those terms are defined in [s. 287.012](#).

(3) **“Commodity”** means any goods, merchandise, wares, produce, chose in action, land, article of commerce, or other tangible or intangible property, real, personal, or mixed, for use, consumption, production, enjoyment, or resale.

(4) **“Governmental entity”** means an agency or entity of the state, a county, municipality, or special district or any other public entity created or authorized by law.

(5) **“Harm”** means pecuniary or other loss, disadvantage, or injury to the person affected.

(6) **“Public contractor”** means, for purposes of [ss. 838.022](#) and [838.22](#) only: (a) Any person, as defined in [s. 1.01\(3\)](#), who has entered into a contract with a governmental entity; or

(b) Any officer or employee of a person, as defined in [s. 1.01\(3\)](#), who has entered into a contract with a governmental entity.

(7) **“Public servant”** means: (a) Any officer or employee of a governmental entity, including any executive, legislative, or judicial branch officer or employee;

(b) Any person, except a witness, who acts as a general or special magistrate, receiver, auditor, arbitrator, umpire, referee, consultant, or hearing officer while performing a governmental function; or

(c) A candidate for election or appointment to any of the officer positions listed in this subsection, or an individual who has been elected to, but has yet to officially assume the responsibilities of, public office.

(8) **“Service”** means any kind of activity performed in whole or in part for economic benefit.

## Fla. Stat. § 838.022

### Official Misconduct

“(1) It is unlawful for a public servant or public contractor, to knowingly and intentionally obtain a benefit for any person or to cause unlawful harm to another, by:

- (a) Falsifying, or causing another person to falsify, any official record or official document;
- (b) Concealing, covering up, destroying, mutilating, or altering any official record or official document, except as authorized by law or contract, or causing another person to perform such an act; or
- (c) Obstructing, delaying, or preventing the communication of information relating to the commission of a felony that directly involves or affects the government entity served by the public servant or public contractor.

(2) For the purposes of this section:

- (a) The term “public servant” does not include a candidate who does not otherwise qualify as a public servant.
- (b) An official record or official document includes only public records.

(3) Any person who violates this section commits a felony of the third degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).”

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## Fla. Stat. § 838.016

### Unlawful compensation or reward for official behavior

“(1) It is unlawful for any person to knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, to knowingly and intentionally request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law, for the past, present, or future performance, nonperformance, or violation of any act or omission which the person believes to have been, or the public servant represents as having been, either within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty. This section does not preclude a public servant from accepting rewards for services performed in apprehending any criminal.

(2) It is unlawful for any person to knowingly and intentionally give, offer, or promise to any public servant, or, if a public servant, to knowingly and intentionally request, solicit, accept, or agree to accept, any pecuniary or other benefit not authorized by law for the past, present, or future exertion of any influence upon or with any other public servant regarding any act or omission which the person believes to have been, or which is represented to him or her as having been, either within the official discretion of the other public servant, in violation of a public duty, or in performance of a public duty.

## Fla. Stat. § 838.016

### Unlawful compensation or reward for official behavior

(3) Prosecution under this section shall not require that the exercise of influence or official discretion, or violation of a public duty or performance of a public duty, for which a pecuniary or other benefit was given, offered, promised, requested, or solicited was accomplished or was within the influence, official discretion, or public duty of the public servant whose action or omission was sought to be rewarded or compensated.

(4) Whoever violates the provisions of this section commits a felony of the second degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).”

## Fla. Stat. § 838.021

### Corruption by threat against public servant

“(1) It is unlawful to harm or threaten to harm any public servant, his or her immediate family, or any other person with whose welfare the public servant is interested with the intent to:

(a) Influence the performance of any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

(b) Cause or induce the public servant to use or exert, or procure the use or exertion of, any influence upon or with any other public servant regarding any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

(2) Prosecution under this section shall not require any allegation or proof that the public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way, that the public servant had assumed office, that the matter was properly pending before him or her or might by law properly be brought before him or her, that the public servant possessed jurisdiction over the matter, or that his or her official action was necessary to achieve the person’s purpose.”

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## Fla. Stat. § 838.21

### Disclosure or use of confidential criminal justice information

“It is unlawful for a public servant, with intent to obstruct, impede, or prevent a criminal investigation or a criminal prosecution, to disclose active criminal investigative or intelligence information as defined in chapter 119 or to disclose or use information regarding either the efforts to secure or the issuance of a warrant, subpoena, or other court process or court order relating to a criminal investigation or criminal prosecution when such information is not available to the general public and is gained by reason of the public servant’s official position. Any person who violates this section commits a felony of the third degree, punishable as provided in [s. 775.082](#), [s. 775.083](#), or [s. 775.084](#).”





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# QUESTIONS?

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