HERNANDO COUNTY WATERWAYS ADVISORY COMMITTEE
MEETING MINUTES – FEBRUARY 16, 2022

Date: Wednesday, February 16, 2022 Time: 7:00 P.M.

Location: Hernando Beach Marine Group Inc. Training Center
4340 Calienta Street, Hernando Beach, FL 34607

Advertised: Friday, February 11, 2022, The Hernando Sun (CLK22-024)

The meeting agenda and back-up material are available online at:
https://www.hernandocounty.us/departments/departments-n-z/public-works/aquatic-services/waterways-advisory-committee/agendas-and-minutes

CALL TO ORDER

Vice Chairman Kathryn Birren called the meeting to order at 7:00 p.m.

Attendee Name	Title	Attendance
Kathryn Birren	Vice Chairman	Present
Mike Fulford	Member	Present
Sarah Hill	Member	Present
Mike Senker	Member	Present
Chris Licata	Member	Present
Wayne Dukes	Commissioner / Liaison	Absent
Scott Herring	Department of Public Works Director / County Engineer	Absent
Keith Kolasa	Aquatic / Waterways Services Manager	Present
Steve Kelly	Corporal / Marine Patrol Officer	Absent
Tina Duenninger	Co. Administration / DPW Executive Office Manager	Present

PLEDGE OF ALLEGIANCE

Vice Chairman Kathryn Birren requested at this time to present Mr. Chuck Morton with a letter and certificate of appreciation scheduled under Old Business Item 5, Chuck Morton Farewell.

OLD BUSINESS

5. **Chuck Morton Farewell**
   Vice Chairman Kathryn Birren presented Mr. Chuck Morton with a letter and certificate of appreciation from the Board of County Commissioners in recognition of his years of service as a member on the former Port Authority and now Waterways Advisory Committee. Mr. Keith Kolasa presented Mr. Morton with a reef ball.

ELECTION OF OFFICERS – Election of Chairman and Vice Chairman

MOTION: Mr. Mike Fulford motioned to nominate Ms. Kathryn Birren as Chairman of the Waterways Advisory Committee for the 2022 calendar year. Mr. Mike Senker seconded. The motion carried and was approved unanimously.

MOTION: Mr. Mike Fulford motioned to nominate Ms. Sarah Hill as Vice Chairman of the Waterways Advisory Committee for the 2022 calendar year. Ms. Kathryn Birren seconded. The motion carried and was approved unanimously.

APPROVAL / MODIFICATION OF AGENDA (Limited to Staff and Committee Only)

Old Business Item 5, Chuck Morton Farewell, was moved up on the agenda following the Pledge of Allegiance. There were no other changes made to the agenda.

SUNSHINE LAW AND CODE OF ETHICS OVERVIEW – Presentation by Assistant County Attorney Maureen Sikora

Ms. Maureen Sikora, Assistant County Attorney, provided an overview of the Sunshine Law and Code of Ethics. Ms. Sikora reviewed Government in the Sunshine Law open meetings with the Committee. Certain requirements of Sunshine Law meetings include notice requirements, public input, recording of members' votes, instances when members can abstain from voting, and meeting minutes which must be taken and made available to the public. Ms. Sikora referenced the Sunshine Law news articles distributed to the Committee members prior to the meeting.

The Guide to the Sunshine Amendment and Code of Ethics was reviewed. Ms. Sikora noted Form 8B Memorandum of Voting Conflict form, which should be made available at each meeting and is to be filled out by members when abstaining from voting.

APPROVAL OF MINUTES – December 15, 2021

MOTION: Mr. Mike Fulford motioned to approve the minutes of the December 15, 2021 Waterways Advisory Committee meeting. Mr. Chris Licata seconded. The motion carried and was approved unanimously.

MARINE PATROL REPORT – Corporal Steve Kelly

Mr. Steve Snell advised Corporal Steve Kelly was on vacation and had requested he attend the meeting on his behalf. Upon query by Mr. Mike Fulford, Mr. Snell responded there were two full time marine deputies on vessels for the county at this time. He advised he was retired and presently served as a volunteer. The Committee thanked him for his service.

In response to Mr. Steve Barton, Mr. Steve Snell indicated the marine deputies try to work different shifts in their approach to be proactive and noted there were no speeding violations on a recent shrimp boat observed at 3:00 a.m. recently.

Mr. Chris Licata queried the county's Code Enforcement and Sheriff's Office coordination regarding waterways. Mr. Steve Snell responded the deputies rely on Code Enforcement for rules and anything the deputies need to tackle a case, Code Enforcement is onboard to assist. Mr. Mike Fulford clarified there were five Code Enforcement officers and one supervisor for the whole county. He noted the county Ordinances were enforced by Code Enforcement, and the Sheriff's Office, along with the Florida Fish and Wildlife Conservation Commission (FWC), was responsible for enforcing the criminal code.

Ms. Maureen Sikora left the meeting at this time.

NEW BUSINESS – Withlacoochee River Hazards

Mr. Keith Kolasa displayed pictures provided in the agenda packet and gave kudos to the Sheriff's Office

marine deputies for inspecting and finding debris hazards along the Withlacoochee River. It was noted most of the floating hazards in the river was from within Hernando County.

OLD BUSINESS

1. **Revisions to Proposed Ordinance on Mooring of Commercial Vessels at Boat Ramps**
   Mr. Keith Kolasa advised a meeting was held with the County Attorney's Office and changes were made to the Proposed Ordinance on Mooring of Commercial Vessels at Boat Ramps based on discussion held at the last Committee meeting. Mr. Kolasa noted he would provide the Committee with a copy of the revised Proposed Ordinance when available and would keep the Committee apprised as to when a public hearing would be scheduled before the Board of County Commissioners.

2. **Updates to Weeki Wachee River Dredge and State Road Canal Dredge Projects**
   Mr. Keith Kolasa announced the Southwest Florida Water Management District (SWFWMD) was scheduled to hold a public meeting on March 1 to discuss the Weeki Wachee River Dredge plans. Mr. Kolasa noted the contractor had begun mobilizing equipment. He further noted the Board of County Commissioners had approved the contract for the State Road Canal Dredge project and Notice to Proceed was being coordinated as the project must be completed by November 15, 2022.

   It was noted that the March 1 meeting was to be held at the Hernando Beach Marine Group Inc. Training Center beginning at 5:30 p.m. Mr. Keith Kolasa advised there were no plans to shut down Rogers Park nor the river.

3. **Hunters Lake Aquatic Plant Maintenance**
   Mr. Keith Kolasa advised quotes were received earlier in the day for the Hunters Lake Aquatic Plant Maintenance project and it was anticipated to get maintenance done by the time dry season began.

4. **Coastal Conservation Association Partnership for 2022 Artificial Reef Projects**
   Mr. Keith Kolasa announced the Coastal Conservation Association (CCA) held a fundraiser last year raising approximately $110,000. The CCA chose to donate $11,000 to Hernando County for reef deployments, which would need to go before the Board of County Commissioners for approval. An additional $15,000 will be donated for a living shoreline project at Jenkins Creek for a collaborative project with Florida Sea Grant and IFAS.

   MOTION: Mr. Mike Senker motioned to recommend the Board of County Commissioners accept the donation from the Coastal Conservation Association in the amount of $11,000 for reef deployments. Mr. Chris Licata seconded. The motion carried and was approved unanimously.

   MOTION: Mr. Mike Senker motioned to recommend the Board of County Commissioners accept the donation from the Coastal Conservation Association in the amount of $15,000 for living shoreline project at Jenkins Creek. Mr. Chris Licata seconded. The motion carried and was approved unanimously.

INFORMATIONAL ITEMS

1. **Hunters Lake Canal Dredging**
   Mr. Keith Kolasa advised the permit for the Hunters Lake Canal dredging was in the process of being renewed as the project would not be completed by the Summer and he would keep the Committee apprised.

2. **Weeki Wachee Springs Protection Zone**
   Mr. Keith Kolasa advised there was a section of the Weeki Wachee River from the early take out to Rogers Park being proposed to be approved as a protection zone. The item was scheduled to be presented to the Board of County Commissioners (BOCC) on February 22 and would then be forwarded to the Florida Fish and Wildlife Conservation Commission (FWC) for consideration. Mr. Mike Fulford clarified the intent of the statewide Springs Protection Zone and noted enforcement would be the responsibility of FWC.

   Discussion ensued regarding enforcement on the river.

   Ms. Bea Shafer inquired whether additional personnel could be requested for enforcement through the BOCC at the time the item was to be discussed. Mr. Mike Fulford proposed Chairman Kathryn Birren write a letter through the Department Director to the BOCC Chairman to consider coordinating enforcement with the Sheriff's Office when FWC grants the proposed protection zone. The Committee concurred.

3. **2022 Meeting Schedule Reminder**
   Mr. Keith Kolasa displayed and reviewed the approved 2022 meeting schedule with the Committee. Chairman Kathryn Birren suggested having different meeting locations throughout the year. Mr. Kolasa noted he would look into it.

CITIZENS' COMMENTS

Ms. Bea Shafer asked for a status update on the Pine Island project and whether a project manager had been hired. Mr. Keith Kolasa responded interviews were scheduled the first week in March and anticipated having a project manager onboard. He stated the Pine Island project would be delegated to the project manager. In the interim, signage and channel markers were being replaced on Pine Island. Chairman Kathryn Birren requested a status update on the project manager be scheduled on the next agenda.

Mrs. Diane Greenwell commented there is an airboat charter in Bayport beginning operations at 7:00 a.m. and ending late at night, sometimes 2:30 a.m., which was incompatible with this area. She indicated there was a need for curfews to be implemented from 9:00 a.m. to 9:00 p.m. and would be speaking before the Board of County Commissioners and Planning & Zoning Commission regarding the matter. Mr. Greenwell commented that the airboats come through the Tarpon canal.

Discussion ensued regarding the Airboat and Noise Ordinances currently in place.

Mrs. Greenwell indicated she wanted to bring the issue up to start looking into it as she believed it would become a bigger issue as more people moved to the area and want to start businesses. Mr. Steve Snell advised he had recently stopped the yellow airboat and they were in compliance.

There were no other citizens' comments.

WATERWAYS ADVISORY COMMITTEE / STAFF COMMENTS

1. Kathryn Birren, Chairman
2. Sarah Hill, Vice Chairman
3. Mike Fulford, Member
4. Mike Senker, Member
5. Chris Licata, Member
6. Keith Kolasa, Aquatic/Waterways Services Manager
7. Scott Herring, Department of Public Works Director/County Engineer

Mr. Mike Fulford thanked Mr. Steve Snell for being present at the meeting on his own time and articulating on the enforcement aspects.

OTHER – Waterways Advisory Committee Agenda Requests for Future Meetings

There was no other business.

ADJOURNMENT

The meeting was adjourned at 9:01 p.m.

Upcoming Meeting(s):

The next regular meeting of the Waterways Advisory Committee will be held on Wednesday, April 20, 2022, at 7:00 P.M., in the Hernando Beach Marine Group Inc. Training Center, 4340 Calienta Street, Hernando Beach, FL 34607.


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GOVERNMENT-IN-THE-SUNSHINE LAW

OPEN MEETINGS

I. SCOPE

Article I, Section 24, Florida Constitution, which was approved by Florida voters in 1992 and became effective July 1, 1993, recognizes a constitutional right of access to meetings of collegial bodies in the State of Florida. The constitution requires almost all meetings of public bodies in the state, except those of the Legislature and the courts, to be noticed and open. (The Legislature and the courts are addressed by other sections of the Constitution.)

Further, the Florida Government-in-the-Sunshine Law, as set forth primarily in Section 286.011, Florida Statutes, provides statutory access by the public to governmental proceedings at the state and local levels. Section 286.011, Florida Statutes, contains three basic requirements:

A. Meetings of public boards or commissions must be open to the public;

B. Reasonable notice of such meetings must be given; and

C. Minutes of the meetings must be taken and promptly recorded and open to public inspection.

The purpose of the open meetings law has been stated as follows:

> To prevent at non-public meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. . . . The statute should be construed so as to frustrate all evasive devices. Town of Palm Beach v. Gradison, 296 So. 2d 473, 477 (Fla. 1974).

Florida courts have broadly construed the Sunshine Law to effect its remedial and protective purposes. See, Wood v. Marston, 442 So. 2d 934 (Fla. 1983); Canney v. Board of Public Instruction of Alachua County, 278 So. 2d 260 (Fla. 1973).

II. ENTITIES/AGENCIES

Section 286.011(1), Florida Statutes, provides 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 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 all such meetings.

The courts have stated that it was the intent of the Legislature for the Sunshine Law to apply to "every board or commission of the state, or of any county or political subdivision over which it has dominion or control." Times Publishing Company v. Williams, 222 So. 2d 470, 473 (Fla. 2d DCA 1969), overruled in part, Neu v. Miami Herald Publishing Company, 462 So. 2d 821 (Fla. 1985). "All governmental entities in Florida are subject to the requirements of the Sunshine Law unless specifically exempted." Sarasota Citizens for Responsible Government v. City of Sarasota, 48 So. 3d 755, 762 (Fla. 2010).

A. Board of County Commissioners

Upon giving due public notice, regular and special meetings of the board may be held at any appropriate public place in the county. Sec. 125.001, Fla. Stat. Actions of the board taken at other than a public place in

the county are ineffective. The public notice relating to regular and special meetings must be given for the public place chosen.

The legislative and governing body of the county has the power to carry on county government and to adopt rules of procedure, select officers, and set the time and place of official meetings. Sec. 125.01(1)(a), Fla. Stat. No express authority is provided for the members of a local board to hold meetings by conference call or telephone hookup. Op. Atty. Gen. Fla. 10-34 (2010) determined that a city may not adopt an ordinance allowing the members of a city board to appear by electronic means for the purpose of constituting a quorum. However, if a quorum of a local board is physically present at the public meeting site, the board may permit a member with health problems to attend through the use of a speaker telephone that allows the absent member to participate in debate, to be heard by other members and the public, and to hear discussions taking place during the meeting. Op. Atty. Gen. Fla. 92-44 (1992) concluded that a dual television communication link with an ill county commissioner might meet the statutory requirement provided that a legal quorum of the commission met at a public place in the county. See also, Op. Atty. Gen. Fla. 94-55 (1994) (out-of-state board of trustee member allowed to participate in museum board meeting).

B. Other Public Agencies

Advisory boards whose duties and powers are limited to making recommendations to the Board of County Commissioners are also subject to the Sunshine Law, even if the advisory board's decisions and opinions are not binding on the county. Town of Palm Beach v. Gradison, supra. The nature of the act being performed by the board, not its makeup or proximity to the ultimate decision, is the key factor in determining whether the law applies to the advisory board. Wood v. Marston, supra. Members of such advisory groups are governed by the same requirements as members of elected boards: meetings must be open to the public; notice must be provided; and minutes must be kept.

Meetings held by any board, committee or agency elected or appointed under the authority of the Board of County Commissioners, including members-elect or members-designate, must comply with Section 286.011, Florida Statutes. The dispositive question is whether there has been a delegation of the county's governmental or legislative function or the commission's decision-making power. Sarasota Citizens for Responsible Government v. City of Sarasota, supra. If so, a Sunshine Law meeting is required.

The following advisory boards have been found to be covered by the open meetings law:

1. Ad hoc committee appointed by the mayor to meet with the chamber of commerce to discuss proposed transfer of city property. Op. Atty. Gen. Fla. 87-42 (1987).

2. Land selection committee composed entirely of staff appointed by a water management district to evaluate projects for acquisition. Op. Atty. Gen. Fla. 86-51 (1986).

3. Citizens advisory committee of the metropolitan planning organization. Op. Atty. Gen. Fla. 82-35 (1982).

4. Central Florida Commission on the Status of Women appointed to make recommendations to several county commissions. Op. Atty. Gen. Fla. 76-193 (1976).

5. Commission established by county ordinance to make recommendations on criminal justice issues. Op. Atty. Gen. Fla. 93-41 (1993).

6. County personnel council created to hear appeals of disciplinary actions. Op. Atty. Gen. Fla. 77-132 (1977).

7. Civil service board for county sheriff's office. Op. Atty. Gen. Fla. 80-27 (1980).

8. Ad hoc committee appointed by the mayor to make recommendations concerning legislation.

Op. Atty. Gen. Fla. 85-76 (1985).

9. Citizen advisory committee appointed by the city council to make recommendations regarding city government and city services. Op. Atty. Gen. Fla. 98-13 (1998).

10. Citizen planning committee appointed by the city council to assist in revision of zoning ordinances. Town of Palm Beach v. Gradison, supra.

11. Site plan review committee created by the county commission to serve in an advisory capacity to the county manager. Lyon v. Lake County, 765 So. 2d 785 (Fla. 5th DCA 2000).

12. Political forum attended by two or more county commissioners who discuss among themselves issues on which foreseeable action may be taken by the commission could be considered a Sunshine Law meeting. Op. Atty. Gen. Fla. 94-62 (1994). But see, Op. Atty. Gen. Fla. 92-5 (1992) (different result where meeting included one incumbent and one non-incumbent person for political office who had not been elected).

A limited exception to Section 286.011, Florida Statutes, exists for advisory committees established solely for fact-finding or information-gathering purposes with no power to make recommendations. For example, a committee appointed to report on employee working conditions was not subject to the Sunshine Law. Bennett v. Warden, 333 So. 2d. 97 (Fla. 2nd DCA 1976); see also, Sarasota Citizens for Responsible Government v. City of Sarasota, supra. The fact-finding exception is restricted to advisory committees, and does not apply to boards that have the ultimate decision-making authority. Finch v. Seminole County School Board, 995 So. 2d 1068 (Fla 5th DCA 2008). The court in the Finch case held that the school board could not take a fact-finding bus tour even though board members were separated from each other by several rows of seats, did not discuss their preferences or opinions, and took no vote during the trip.

C. Private Organizations

As a general rule, private organizations are not subject to the requirements of Section 286.011, Florida Statutes, unless such organization has been created by a public entity, has been delegated the authority to perform some governmental function, or plays an integral part in the decision-making process of a public entity. Op. Atty. Gen. Fla. 07-27 (2007). The Sunshine Law ordinarily does not apply to meetings of a homeowners association board of directors or a mobile home park board of directors.

Private corporations and organizations may be bound by the Sunshine Law, although such a finding requires more than receipt of funds from a governmental agency or provision of services to a governmental agency. The determination involves whether the private entity was established by law or a public agency and whether the private entity is acting on behalf of a governmental agency in the performance of public duties. A board or commission created by a public agency or entity is subject to Section 286.011, Florida Statutes. Op. Atty. Gen. Fla. 00-08 (2000). For instance, an architectural review committee of a homeowners association which, pursuant to county ordinance, reviews and approves applications for building permits must follow the requirements of Section 286.011, Florida Statutes. Op. Atty. Gen. Fla. 99-53 (1999). The Sunshine Law also applies to a property owners association when acting on behalf of a municipal service taxing unit. Op. Atty. Gen. Fla. 07-44 (2007).

In determining which private entities may be covered by Section 286.011, Florida Statutes, the courts have held that the Legislature intended to bind "every board or commission of the state, or of any county or political subdivision over which it has dominion and control." Times Publishing Company v. Williams, supra at 473. The Attorney General's Office has advised that a not-for-profit corporation created by a city redevelopment agency to assist in the implementation of the city's redevelopment plan must comply with the Sunshine Law. Op. Atty. Gen. Fla. 97-17 (1997). Accord, Keesler v. Community Maritime Park Associates, Inc., 32 So. 3d 659 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1289 (Fla. 2010). Similarly, a nonprofit corporation created by a county to act as a county instrumentality and for its benefit in financing and administering governmental programs is subject to the law. Op. Atty. Gen. Fla. 94-34 (1994).

Another test to determine whether the open meetings laws apply to a private entity focuses on whether the private entity is merely providing services or "is standing in the shoes of the public agency." Op. Atty. Gen. Fla. 98-21 (1998). The Attorney General's Office has concluded that a not-for-profit corporation that contracted with a city to carry out affordable housing responsibilities and also reviewed and screened applicant files is an agency for purposes of the Sunshine Law. Op. Atty. Gen Fla. 08-66 (2008). A nonprofit organization specifically established to contract with a county for operation of a public golf course on property acquired with public funds is also covered by the law. Op. Atty. Gen. Fla. 02-53 (2002). In addition, a direct-support organization created as a private nonprofit corporation for the purpose of assisting a public museum is required to follow Section 286.011, Florida Statutes. Op. Atty. Gen. Fla. 92-53 (1992). If a county commission dissolves its cultural affairs council and designates a nonprofit organization to fulfill that responsibility for the county, the organization would be bound by the Sunshine Law because the nonprofit entity would be providing services in place of the county council and would receive public funding formerly provided to the council for the same purpose. Op. Atty. Gen. Fla. 98-49 (1998). The Sunshine Law applies to a private organization when there has been a delegation of the public agency's authority to conduct public business, such as a private entity implementing the county's economic development strategic plan, Op. Atty. Gen. Fla. 10-30 (2010), or a task force considering downtown redevelopment issues, Op. Atty. Gen. Fla. 85-55 (1985).

D. Staff

Meetings of staff of boards and commissions covered by the Sunshine Law are generally not subject to Section 286.011, Florida Statutes. School Board of Duval County v. Florida Publishing Company, 670 So. 2d 99 (Fla. 1st DCA 1996). The court in Sarasota Citizens for Responsible Government v. City of Sarasota, supra, held that discussions among the deputy county administrator, staff and consultants in negotiating with a baseball team did not violate the Sunshine Law based on the informational role of the negotiating team. However, if a staff member is appointed to a committee which is delegated authority to make recommendations to or act on behalf of a board or official, the Sunshine Law applies to the committee. When public officials delegate their decision-making authority to a committee of staff members, those individuals no longer function as staff but "stand in the shoes of such public officials" as far as the Sunshine Law is concerned. Evergreen the Tree Treasurers of Charlotte County, Inc. v. Charlotte County Board of County Commissioners, 810 So. 2d 526, 531-532 (Fla. 2d DCA 2002).

Wood v. Marston, supra, held that a committee composed of staff created for the purpose of screening applications and making recommendations for the position of law school dean must comply with Section 286.011, Florida Statutes, because the committee performed a policy-based, decision-making function delegated to it by the president of the university. See also, Dascott v. Palm Beach County, 877 So. 2d 8 (Fla. 4th DCA 2004) (meeting of pre-termination conference panel established pursuant to county ordinance and delegated authority for employee discipline is subject to Sunshine Law). The Attorney General's Office has found the Sunshine Law applicable to a three-member panel appointed by the city manager to hold post-termination hearings, Op. Atty. Gen. Fla. 07-54 (2007), an employee advisory committee authorized to make recommendations to the governing board, Op. Atty. Gen. Fla. 96-32 (1996), and a staff grievance committee created to make nonbinding recommendations to the county administrator regarding disposition of employee grievances, Op. Atty. Gen. Fla. 84-70 (1984).

In Silver Express Co. v. District Board of Lower Tribunal Trustees, 691 So. 2d 1099 (Fla. 3d DCA 1997), the court decided that a committee comprised of staff and one outside person created by a college purchasing director to assist and advise in evaluating contract proposals was subject to the Sunshine Law. According to the court, the committee's job involved weeding through the various proposals, determining which were acceptable, and ranking them. This function brought the committee within the scope of Section 286.011, Florida Statutes, because "governmental advisory committees which have offered up structured recommendations . . . which eliminate opportunities for alternative choices by the final authority, or which rank applications for the final authority – have been determined to be agencies governed by the Sunshine Law." 691 So. 2d at 1101. A similar conclusion was reached in Op. Atty. Gen. Fla. 05-06 (2005) concerning a city development review committee consisting of several city officials and representatives of various city

departments to review and approve development applications.

III. MEETINGS/COMMUNICATIONS

The Sunshine Law applies to any gathering of two or more members of the same public board or commission to discuss a matter on which foreseeable action will be taken by that board or commission. Sarasota Citizens for Responsible Government v. City of Sarasota, supra; Hough v. Stembridge, 278 So. 2d 288 (Fla. 3d DCA 1973). There is no requirement that a quorum of the board be present. The law extends to discussions and deliberations as well as formal action by a board or commission. Any gathering is covered, regardless of whether the meeting is formal or informal, or designated as a workshop, conference session, quasi-judicial hearing, or executive session. This includes an organizational session of a board. Ruff v. School Board of Collier County, 426 So. 2d 1015 (Fla. 2d DCA 1983).

Discussions not related to matters on which foreseeable action will be taken are not subject to the open meetings law. For example, discussions between two board members regarding how the Tampa Bay Buccaneers played are not covered by the Sunshine Law. However, the law would apply to discussions on county financing of a new stadium for the Tampa Bay Buccaneers, especially if the board could be expected in the foreseeable future to act on the matter.

A. Types of Communication

Under Section 286.011, Florida Statutes, members of a board or commission may not take action or engage in private discussions by written correspondence, e-mails or other electronic communications. The open meetings law does not prohibit a city commissioner from sending documents to other members of the commission on matters coming before the commission for official action, as long as there is no response from or interaction among the commissioners prior to the public meeting. Op. Atty. Gen. Fla. 07-35 (2007). In such cases, the records are subject to disclosure under the Public Records Act and are not being used as a substitute for action at a public meeting because there is no interaction among commissioners prior to the meeting. Op. Atty. Gen. Fla. 89-23 (1989).

However, if a report is circulated among board members for comments and comments are provided to other members, such interaction must occur in compliance with the Sunshine Law. Op. Atty. Gen. Fla. 90-3 (1990). Use of computers by members of a public board or commission to communicate among themselves on issues pending before the board would also constitute a violation of the Sunshine Law. Op. Atty. Gen. Fla. 89-39 (1989). While a city commissioner may use a website blog or message board to post a comment about city business, any subsequent postings by other commissioners on the subject of the initial blog may be construed as a response which is subject to the Sunshine Law. Op. Atty. Gen. Fla. 08-07 (2008). Members of a city board or commission may not engage on the city's Facebook page in an exchange or discussion of matters that foreseeably will come before the board or commission for official action. Op. Atty. Gen. Fla. 09-19 (2009). In addition, Op. Atty. Gen. Fla. 01-21 (2001) expressed concern about board members distributing their own position papers on the same subject to other members outside of a duly noticed meeting.

Section 286.011, Florida Statutes, prohibits members of a public board or commission from discussing by telephone matters which foreseeable will come before that board or commission for action. But see, Op. Atty. Gen. Fla. 98-28 (1998) (authorizing a board to use electronic media technology to allow a member of the board who is absent to attend the meeting). If a quorum of the local board is physically present, the participation of an absent member by telephone conference or other interactive electronic technology is permissible when the absence is due to extraordinary circumstances such as illness. Op. Atty. Gen. Fla. 03-41 (2003).

The Attorney General's Office has advised that local boards may use electronic media technology such as video conferencing and digital audio to conduct informal discussions and workshops over the Internet, provided that proper notice is given and interactive access is afforded to members of the public. Op. Atty. Gen. Fla. 01-66 (2001). However, the use of electronic media technology does not satisfy quorum requirements necessary for official action to be taken by local boards. Op. Atty. Gen. Fla. 06-20 (2006).

Furthermore, using an electronic bulletin board to discuss matters over an extended period of days or weeks, which does not permit the public to participate on line, violates the Sunshine Law by circumventing the notice and access provisions of the statute. Op. Atty. Gen Fla. 02-32 (2002).

B. Members of Boards

Although the open meetings law does not normally encompass an individual member of a public board or commission or public officials who are not commission members, situations may arise where a board delegates its decision-making power to a single member or a non-member is used as a liaison among board members. In such circumstances, compliance with Section 286.011, Florida Statutes, is mandatory. For example, when a board member gathers information or acts as a fact-finder, the law does not apply. Op. Atty. Gen. Fla. Fla. 95-06 (1995). If a member of a public board is authorized to explore various contract proposals which are reported back to the governing body for consideration, the discussions between the board member and the individual are not subject to the Sunshine Law. Op. Atty. Gen 93-78 (1993).

By contrast, if a board member has been delegated the authority to reject certain options from consideration by the entire board, the board member is performing a decision-making function that must be conducted in accordance with Section 286.011, Florida Statutes. Op. Atty. Gen. Fla. 95-06 (1995). In Leach-Wells v. City of Bradenton, 734 So. 2d 1168 (Fla. 2d DCA 1999), the city clerk tallied the results of evaluations by committee members charged with reviewing proposals and ranked the results. The court held that the short-listing constituted formal action that was required to be taken at a public meeting. The delegation of decision-making authority extends to actions such as negotiating the terms of a lease, Op. Atty. Gen. Fla. 84-54 (1984), or conducting a hearing or investigatory proceeding, Op. Atty. Gen. Fla. 75-41 (1975), on behalf of the board.

Generally, discussions between a member of a board and staff or other non-member are not subject to the Sunshine Law, provided that the staff or non-member is not being used as liaison or conduit among board members. See, Blackford v. School Board of Orange County, 375 So. 2d 578 (Fla. 5th DCA 1979). Op. Atty. Gen. Fla. 74-47 (1974) advised that a city manager may meet with individual members of a city council, but may not act as a liaison by circulating information and thoughts of council members. In Sarasota Citizens for Responsible Government v. City of Sarasota, supra, the court found no violation of the law where staff members met privately with individual commissioners in preparation for a public hearing on a memorandum of understanding because the meetings were informational briefings regarding the contents of the document and there was no evidence that staff communicated any statements from one commissioner to another.

However, the court in the Blackford case ruled that a series of meetings between staff and board members held in rapid-fire succession to avoid public airing of a controversial problem amounted to a de facto meeting of the school board in violation of Section 286.011, Florida Statutes. Administrators and department heads should refrain from contacting members of a board to ascertain their position or vote on a matter that will foreseeably be considered by the board. See, Op. Atty. Gen. Fla. 89-23 (1989).

The Sunshine Law does not apply to meetings between members of different boards, as long as one or more of the members has not been delegated authority to speak or act on behalf of that member's board. Rowe v. Pinellas Sports Authority, 461 So. 2d 72 (Fla. 1984). If an individual board member has been delegated authority to act for the board, any meeting the member has would be subject to the law. Op. Atty. Gen. Fla. 87-34 (1987) approved a private meeting between an individual city council member and a member of the municipal planning and zoning board to discuss a recommendation made by the board, provided no delegation of authority has been made and neither member was acting as a liaison.

County commissioners who are members of a regional planning council may take part in council meetings and express their opinions without violating the Sunshine Law. Op. Atty. Gen. Fla. 07-13 (2007). However, they should not discuss or debate such issues either as commissioners or as council members outside a public meeting. City commissioners are not prohibited from attending other city board meetings and commenting on agenda items that may subsequently come before the commission for final action, but they may not discuss those issues among themselves. Op. Atty. Gen. Fla. 00-68 (2000).

Section 286.011, Florida Statutes, includes meetings with or attended by any person elected to a board or commission, but who has not yet taken office. Thus, Sunshine Law requirements apply to discussions between members and members-elect and among members-elect of boards and commissions. See, Hough v. Stembridge, supra. Exceptions to this rule exist for a retiring member and a member-elect who will not serve together on the same board or council, Op. Atty. Gen. Fla. 93-04 (1993), and for candidates for office, unless the candidate is an incumbent seeking reelection, Op. Atty. Gen. Fla. 92-05 (1992).

Candidates' night forums sponsored by private civic clubs during which county commissioners express their positions on matters that may foreseeably come before the county are not governed by the open meetings law, as long as the commissioners avoid discussing these issues among themselves. Op. Atty. Gen. Fla. 94-62 (1994). This opinion cautioned public officials to avoid situations in which private political or community forums are used to circumvent the statutory requirements.

There is no Sunshine Law prohibition against members of the same public board or commission serving and participating in private organizations or meeting socially, as long as they do not discuss among themselves public board matters without satisfying Section 286.011, Florida Statutes. Op. Atty. Gen. Fla. 92-79 (1992); Op. Atty. Gen. Fla. 72-158 (1972). An Attorney General opinion advised that if a matter does come before the private organization which might be considered by the public board or commission, then one or both public members should excuse themselves from the private meeting. Alternatively, the meeting of the private organization should be conducted in compliance with the Sunshine Law. Op. Atty. Gen. Fla. 83-70 (1983). If a board member cannot determine whether a meeting is subject to Section 286.011, Florida Statutes, the member should either leave the meeting or ensure that the meeting complies with the law. See, Town of Palm Beach v. Gradison, supra.

IV. EXEMPTIONS

A. Litigation Discussions

Meetings attended by any board or commission of any county, municipal corporation, or political subdivision, the chief administrator or executive officer of the governmental entity, and the entity's attorney to discuss pending litigation to which the entity is a party before a court or administrative agency, provided that the following conditions are met:

1. The attorney must advise the entity at a public meeting that the attorney desires advice concerning the litigation;

2. The subject matter of the meeting must be confined to settlement negotiations or strategy sessions relating to litigation expenditures;

3. The entire session must be recorded by a certified court reporter;

4. The court reporter's notes must be fully transcribed and filed with the entity's clerk within a reasonable time after the meeting;

5. The entity must provide reasonable public notice of the attorney-client session and the names of persons attending the session;

6. The session must commence at an open meeting during which the chair must announce the commencement and estimated length of the attorney-client session;

7. At the conclusion of the session, the entity must reconvene the public meeting and the chair must announce the termination of the attorney-client session; and

8. The transcript must be made part of the public record upon conclusion of the litigation or

administrative proceeding.

Sec. 286.011(8), Fla. Stat.

B. Collective Bargaining Discussions

All discussions between the chief executive officer of a public employer and the legislative body relative to collective bargaining. Sec. 447.605(1), Fla. Stat. Note that no exemption exists for negotiation meetings between the chief executive officer and the bargaining agent. Sec. 447.605(2), Fla. Stat.

C. Risk Management Meetings

Meetings and proceedings conducted pursuant to a risk management program administered by the state, its agencies or subdivisions relating to the evaluation of claims or offers of compromise of claims filed with the program. Sec. 768.28(16)(c), Fla. Stat.

D. Competitive Solicitation Negotiations

Any portion of a team meeting to discuss negotiation strategies, to conduct negotiations with a vendor, or at which a vendor makes an oral presentation or answers questions pursuant to a competitive solicitation, defined to include sealed bids, proposals or replies in accordance with a competitive process, regardless of the method of procurement, subject to the following requirements:

1. A complete record must be made of any exempt meeting;

2. The recording and any records presented at the exempt meeting are exempt until notice of the intended decision or 30 days after opening the bids, proposals or final replies, whichever occurs earlier; and

3. If all bids, proposals or replies are rejected and notice of intent to reissue a competitive solicitation is provided, the recording and any records presented at the exempt meeting remain exempt until notice of an intended decision concerning the reissued competitive solicitation or withdrawal of the reissued competitive solicitation, not to exceed 12 months after the initial notice rejecting all bids, proposals or replies.

Sec. 286.0113(2), Fla. Stat.

E. Criminal Justice Commission Discussions

Any portion of a criminal justice commission meeting when members discuss active criminal intelligence information or active criminal investigative information, provided that the commission members publicly disclose at the meeting the fact that such matters are being discussed. Sec. 286.01141, Fla. Stat.

V. PROCEDURAL REQUIREMENTS

A. Notice

Section 286.011, Florida Statutes, requires that reasonable notice must be given of all public meetings. In Op. Atty. Gen. Fla. 90-56 (1990), the Attorney General suggested the following guidelines for notice:

1. The notice should contain the time and place of the meeting and an agenda or subject matter summation.

2. The notice should be prominently placed in an area set aside for that purpose, such as the County Administration Building.

3. Notice of regular meetings should be provided at least seven days prior to the meeting.

4. Emergency sessions should be afforded the most appropriate and effective notice under the circumstances.

5. Special meetings should have at least 24 to 72 hours reasonable notice to the public.

6. Press releases, faxes, e-mails and/or phone calls to newspapers and other media are encouraged.

7. Advertising in local newspapers of general circulation is appropriate.

8. Notice is required for meetings of board members even though a quorum is not present.

9. If a meeting is adjourned and reconvened later to complete the business, the second meeting should also be noticed.

10. Notice requirements imposed by other statutes, charters and codes must be strictly followed.

Use of the agency's website and e-mails for notices of public meetings are also encouraged. Op. Atty. Gen. Fla. 00-08 (2000). Section 286.0105, Florida Statutes, imposes additional requirements for notices of public hearings where a public board or commission acts in a quasi-judicial capacity or takes official action on matters that affect individual rights of citizens, as opposed to the rights of the public at large. Op. Atty. Gen. Fla. 81-06 (1981).

Hernando County provides written public notice posted in the County Administration Building. Notices are also posted electronically on the County website, run on the government access cable channel, and e-mailed or sent to the media and various public officials. Other types of notices are also provided for public hearings through publication of advertisements in the local newspaper, posting signs, and mailing letters to individuals or groups affected by the issue.

B. Location

Section 286.011(6), Florida Statutes, prohibits boards or commissions from holding meetings at any facility or location which discriminates on the basis of sex, age, race, creed, color, origin, or economic status, or which operates in a manner that unreasonably restricts public access. Section 286.26, Florida Statutes, requires accessibility of public meetings to physically handicapped persons. Luncheon meetings to conduct board or commission business should be avoided. Such meetings may discourage attendance and participation by the public. Furthermore, discussions at such meetings may violate the openness requirement of the law if the members of the board or commission cannot be heard beyond the table at which they are seated. Op. Atty. Gen. Fla. 71-159 (1971).

For meetings held outside the county, "[t]he interests of the public in having a reasonable opportunity to attend a Board Workshop must be balanced against the Board's need to conduct a workshop at a site beyond the county's boundaries." Rhea v. School Board of Alachua County, 636 So. 2d 1383, 1385 (Fla. 1st DCA 1994). The greater the distance, the heavier the burden upon the board to establish the need for meeting in such location. In addition, Section 125.001, Florida Statutes, requires meetings of the board of county commissioners to be held at any appropriate place in the county.

The Sunshine Law does not prohibit members of an advisory board from conducting inspection trips, but all requirements of Section 286.011, Florida Statutes, must be met – advance notice must be given, the public must be afforded an opportunity to attend, and minutes must be promptly recorded. Op. Atty. Gen. Fla. 76-141 (1976). Members of the board must avoid discussions with each other regarding matters that may come before the board for official action. Bigelow v. Howze, 291 So. 2d 645 (Fla. 2d DCA 1974). The exception to

the Sunshine Law for fact-finding missions applies only to advisory committees and not to boards with ultimate decision-making authority. Finch v. Seminole County School Board, supra.

For meetings where a large turnout of the public is expected, the board or commission should schedule the meetings at facilities which can accommodate the anticipated turnout. In addition, the use of video technology, such as a television screen outside the meeting room, may be appropriate.

Every oral communication uttered by members of a board or commission at a public meeting is entitled to be heard by the public. A violation of the Sunshine Law may occur if board members discuss issues before the board in a manner not audible to persons attending the board meeting. See, Op. Atty. Gen. Fla. 71-159 (1971).

C. Rules

Reasonable rules and policies to insure orderly conduct and behavior at public meetings may be adopted by the board or commission. Citizens may use nondisruptive devices to tape record and video tape board and council meetings. Op. Atty. Gen. Fla. 77-122 (1977); Op. Atty. Gen. Fla. 91-28 (1991).

Prior to the enactment of Section 286.0114, Florida Statutes, the courts ruled that the Sunshine Law provided a right to attend public meetings, but did not give the public the right to speak at such meetings. Keesler v. Community Maritime Park Associates, Inc., supra. Certain exceptions exist for public hearings, such as adoption of ordinances and rezonings. In response to the court cases, the Florida Legislature enacted Section 286.0114, Florida Statutes, which requires a board or commission to provide members of the public with a reasonable opportunity to be heard on a proposition before the board or commission. The opportunity to be heard does not have to occur at the same meeting when the board or commission takes official action on the item, but must take place within reasonable proximity in time to such meeting. This section allows boards and commissions to adopt policies or rules on providing testimony and establishes criteria for such policies (time limits for speakers, procedures for designating a representative of a group or faction, forms to indicate a speaker's position, and specified period of time for public comment). Exemptions from the opportunity for hearing include emergency situations, ministerial acts, meetings exempt from the Sunshine Law, or acting in a quasi-judicial function with respect to the individual rights of a person. The public participation statute provides for payment of attorney's fees in any action to enforce the opportunity to be heard but does not void any action taken by a board or commission in violation of the provisions. The rules adopted by Resolution R-15-031 establish time limits for speakers to address the Manatee County Board of County Commissioners with maximum time limits per agenda item and per speaker.

A board may not use secret ballots to elect the chairman and other officers of the board, Op. Atty. Gen. Fla. 72-326 (1972), or to take action concerning a public employee, Op. Atty. Gen. Fla. 73-264 (1973). The use of predetermined numbers or codes at public meetings to avoid identifying either the vote of board members or the items voted on violates Section 286.011, Florida Statutes. Op. Atty. Gen. Fla. 77-48 (1977). Once a vote is taken, the public agency may not withhold the final decision from the public for any period of time. Op. Atty. Gen. Fla. 73-344 (1973).

D. Minutes

Section 286.011(2), Florida Statutes, provides that "[t]he minutes of a meeting of any such board or commission . . . shall be promptly recorded and such records shall be open to public inspection." However, the minutes of public meetings need not be verbatim transcripts, but can be merely a brief summary or series of brief notes or memoranda reflecting the events of the meeting. Op. Atty. Gen. Fla. 82-47 (1982).

VI. CONSEQUENCES/PENALTIES

Any member of a board or commission who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree. Sec. 286.011(3)(b), Fla. Stat. A second degree misdemeanor is punishable by a fine up to $500 and/or a term of imprisonment not to exceed 60 days. Secs. 775.082(4)(b) and 775.083(1)(e), Fla.

Stat. The criminal penalties apply to members of advisory councils as well as members of elected and appointed boards. Op. Atty. Gen. Fla. 01-84 (2001).

Section 286.011(3)(a), Florida Statutes, provides that any public officer who violates the Sunshine Law is guilty of a noncriminal infraction, punishable by a fine not exceeding $500. If a nonprofit corporation is subject to the open meetings law, its board of directors becomes public officers for purposes of the statute. Op. Atty. Gen. Fla. 98-21 (1998).

The Governor may suspend an elected or appointed public officer who is indicted or informed against for any misdemeanor arising out of official duties. Sec. 112.52, Fla. Stat. If the officer is found guilty or pleads nolo contendere, the person may be removed from office by the Governor.

Section 286.011(4), Florida Statutes, requires the court to assess reasonable attorney's fees against a board or commission found in violation of the Sunshine Law. Attorney's fees may be assessed against individual members of the board or commission, unless the board or commission sought and took the advice of its attorney. Sec. 286.011(4), Fla. Stat. The statute also authorizes an award of attorney's fees if the board or commission appeals any court order finding a violation of the Sunshine Law and the order is affirmed on appeal. Sec. 286.011(5), Fla. Stat.

The courts have held that any action taken in violation of the law is void ab initio. See, Blackford v. School Board of Orange County, supra. However, Sunshine Law violations can be cured by taking independent, final action at a public meeting held in compliance with Section 286.011, Florida Statutes. See, Monroe County v. Pigeon Key Historical Park, Inc., 647 So.2d 857 (Fla. 3d DCA 1994). Such final action must not merely perfunctorily ratify or ceremoniously accept the decisions made at the prior secret meeting. Tolar v. School Board of Liberty County, 398 So. 2d 427 (Fla. 1981). Since an audit committee's statutorily prescribed function to create a request for proposals may not be delegated to a subordinate entity, the Attorney General advised that the committee could not ratify a defective request for proposals which was created and issued by the county's financial officer. Op. Atty. Gen. Fla. 12-31 (2012).

The only remedies available pursuant to the Sunshine Law are a declaration of the wrongful action as void and reasonable attorney's fees. Dascott v. Palm Beach County, 988 So. 2d 47 (Fla. 4th DCA 2008), review denied, 6 So. 3d 51 (Fla. 2009). The court in this case ruled that an employee who prevailed in a lawsuit alleging that the termination violated the Sunshine Law may not recover the equitable relief of back pay because money damages are not a remedy provided for under the law.

Circuit courts have jurisdiction to issue injunctions upon application of any citizen of the state. Sec. 286.011(2), Fla. Stat. The burden of proof necessary for a citizen to prevail in such a case is less than normally required in an injunction proceeding. In Sunshine Law cases, a showing that the law has been violated constitutes irreparable public injury. Town of Palm Beach v. Gradison, supra.

Declaratory relief allows the court to rule on the meaning of the law or determine the rights of the parties to the action. Declaratory relief sought by a public board or commission regarding access to its meetings has not been viewed favorably by the courts. See, Askew v. City of Ocala, 348 So. 2d 308 (Fla. 1977).

Former senator loses appeal over Sunshine Law violation

Freedom of Information | Feature | October 13, 2004

News Media Update **FLORIDA** Freedom of Information

Former senator loses appeal over Sunshine Law violation

- ***An appellate court upheld the conviction and jail sentence for an Escambia county commissioner and former state Senate president who violated open meetings law by meeting in secret with other commissioners.***

Oct. 13, 2004 -- A former Florida Senate president's conviction and 60-day jail sentence for violating Florida's Sunshine Law as a county commissioner was upheld Thursday by a three-judge panel of the 1st District Court of Appeal. W.D. Childers, convicted by a jury in 2002 after he discussed public business in private with a fellow Escambia County commissioner, has already served 38 days of his sentence, the *St. Petersburg Times* reported.

Florida's Sunshine Law requires that meetings between two or more members of the same elected or appointed board or commission be held in public with notice given and minutes taken.

A grand jury indicted all but one of the county commissioners on charges of violating the Sunshine Law, said Assistant State Attorney Bobby Elmore.

Elmore said the appellate panel's unwritten decision could indicate that the issue is over.

"I can't read the minds of the District Court," he said. "I have to assume they would consider any new approach taken in a rehearing. It simply appears to me the fact they didn't [write an opinion] pretty well indicates that it's laid to rest."

Childers' attorney, Richard Lubin of West Palm Beach, said his client, who served in the Florida Legislature for 30 years, is not in jail and hopes not to have to return to jail.

"I just signed my motion for a rehearing," Lubin said. "This case has a long history. It has to do with a public official

charged with violating a Sunshine Law and the question of if can you express opinion to other officials if there isn't an opinion issued back."

The revelation of a Sunshine Law violation came as a result of a criminal investigation by the state attorney's office into corruption allegations on the Escambia Board of County Commissioners, Elmore said.

"As that investigation went forward, the violations of the Sunshine Law surfaced," he said.

"In all likelihood, our office will try to get [the judge] to set a hearing to send [Childers] to the sheriff's office to serve out the rest of his sentence," he added. "I found it very interesting in the appeal that the First Amendment Foundation filed an amicus brief, and I thought it was a very good brief. It all turned out about as I expected it would."

The First Amendment Foundation works to ensure free speech and open government in Florida.

(Childers v. Florida) -- CB

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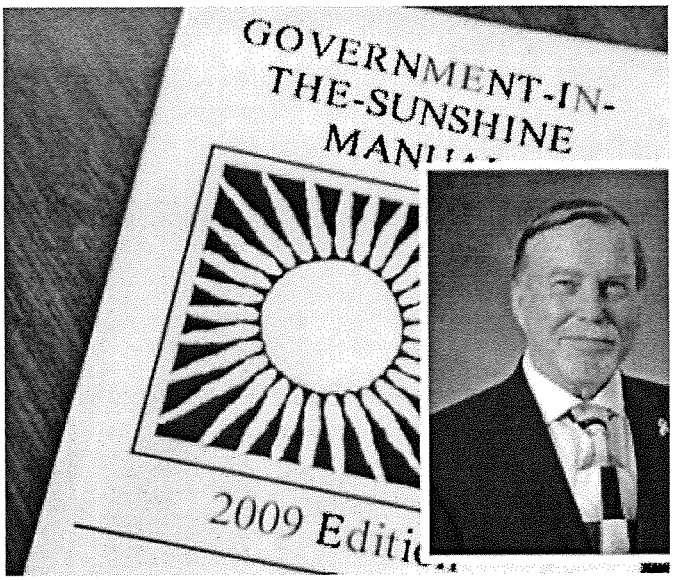
Commissioner charged with alleged Sunshine Law violation

By TOM McLAUGHLIN | Daily News
Published: Thursday, March 12, 2015 at 16:36 PM.



Santa Rosa County Commissioner Bob Cole's January conversation with a fellow member of Milton's Downtown Redevelopment Advisory Board could prove expensive.

State Attorney Bill Eddins has determined that a discussion between Cole and Elba Robertson constituted a non-criminal violation of Florida's Sunshine Law.

Cole is scheduled to appear in Santa Rosa County Court June 5 to answer the charge. He faces a maximum penalty of a $500 fine.

DOCUMENT: Read the charging document.

Robertson, a non-elected volunteer member of the board, was not charged, Eddins said.

She did consent to resign her position on the Advisory Board and "agreed not to serve on any Sunshine Boards without additional training in the law," according to a news release from Eddins' office.

Cole, who could not be reached for comment Thursday, has always acknowledged discussing a board nomination with another sitting board member prior to the Jan. 15 meeting.

He has consistently contended he did nothing wrong.

Eddins said his office determined the discussion between Cole and Robertson involved a topic "we could reasonably believe would come back to the board at their board meeting."

The discussion took place in a public place, Eddins said. At least one fellow commissioner overheard it and made mention of it after the Advisory Board meeting was under way.

Contact Daily News Staff Writer Tom McLaughlin at 850-315-4435 or tmclaughlin@nwfdailynews.com. Follow him on Twitter @TomMnwfdn.

Herald-Tribune

Sarasota settles Sunshine suit for $10,000

By Jessie Van Berkel
Published: Saturday, October 20, 2012 at 6:15 p.m.

What started as the mayor's idea for a children's interactive art project ended last week — not with small bronze sculptures along Main Street, but with $10,000 in legal bills for the city.

The city paid the unforeseen cost to settle a lawsuit that stemmed from the creation of a Public Art Steering Committee in June 2011. The committee was supposed to lead the $55,000 art project and members met several times over the past year.

But the city did not give advance public notice of those meetings, a violation of state laws that are supposed to ensure that taxpayers have a chance to participate in decisions to spend their money.

Activists sued the city over the violation, one of several recent lawsuits alleging Sunshine Law violations in and around City Hall. The $10,000 settlement over the art project comes after the city and its insurers paid more than $90,000 to settle another suit involving Sunshine Law violations during a police officer's disciplinary hearing in 2010.

Yet another Sunshine lawsuit is pending. It was filed last month by paralegal Michael Barfield against Sarasota's Downtown Improvement District advisory board claiming the volunteer board members deleted emails related to city business.

In response to the lawsuits, the city plans to hold refresher sessions over the next couple of weeks on the state's Government-in-the-Sunshine Law and email usage for commissioners and advisory board members.

The Public Art Steering Committee's violation during talks about the Main Street art project was inadvertent, City Attorney Robert Fournier said.

When the steering committee was created, Sarasota already had an appointed Public Art Committee, charged with reviewing art proposals and advising the city. But that group did not get any say in the Main Street project, according to the lawsuit filed by Public Art Committee member George Haborak, who did not like the project.

Haborak sued after city commissioners approved the project plans in June.

The lawsuit was settled last week, when the city agreed to halt the arts project and pay about $7,000 in legal bills for Haborak's attorney, Andrea Mogensen.

Two volunteers on the steering committee, Virginia Hoffman and city planner Clifford Smith, were individually named in the lawsuit.

"I do not believe either of them individually have done anything in violation of the Sunshine Law," Fournier said. It was the city, not the individual volunteers, that failed to follow the correct process, he said.

The city also covered the legal fees for Hoffman, who hired an outside attorney for more than $3,000.

The plan for the bronze sculptures is at a standstill. The city has agreed to drop the project for now, but commissioners can try it again if they go back through the approval process and comply with the Sunshine Law this time, according to the terms of the settlement.

Herald-Tribune

Sarasota admits to Sunshine Law violation

By Ian Cummings
Published: Friday, November 15, 2013 at 5:15 p.m.

A lawsuit accused Sarasota city commissioners Susan Chapman, left, and Suzanne Atwell of violating Florida's Government-in-the-Sunshine Law and wanted fines to come out of their pockets.

Admitting to a Sunshine Law violation and agreeing to pay more than $17,000 in attorneys fees, the city has settled its most recent open-government lawsuit.

The deal was finished Thursday after weeks of negotiation with Citizens for Sunshine, a local government watchdog that sued Sarasota last month over a meeting on homelessness between city officials and a group of downtown merchants.

According to the settlement, the city violated the state's open-meetings law by failing to give public notice of the Oct. 10 meeting, which two city commissioners attended. City officials had accepted the invitation of a local business group to attend the meeting and "build a coalition to support our homeless efforts." The quote, attributed to City Manager Tom Barwin in the complaint filed later that month, pointed to city business that will likely come before the City Commission soon.

Negotiations over the past two weeks were complicated by the fact that the two commissioners who attended the meeting, Susan Chapman and Suzanne Atwell, were named individually in the suit. The case is still ongoing because, while the city and Atwell have each reached settlements with Citizens for Sunshine, Chapman has not and may fight the case in court. Chapman has said she did not break the law, and is represented by Tampa attorney Richard Harrison, whose $365 per hour fees will likely be paid by the city.

Atwell's agreement with Citizens for Sunshine, signed last week, obligates her to attend the city's next Government-in-the-Sunshine Law training and pay a $500 donation to support homelessness efforts among veterans. She has declined to comment on the lawsuit since it was filed on Oct. 18.

On Monday, City Attorney Bob Fournier will explain to the City Commission the total cost of the lawsuit, which he has estimated at about $50,000 depending on how long the case goes on. The city will owe about $17,680 to attorneys for Citizens for Sunshine, in addition to paying the City Attorney's Office and, most likely, the two private attorneys who have represented Chapman and Atwell.

MARCH 25, 2015

Shores mayor, councilman charged with Sunshine Law violations [4]

by Mark Schumann • Indian River Shores
MARK SCHUMANN

See also: Sunshine Law questions raised with State Attorney's Office

Brian Barefoot

Richard Haverland

According to Assistant State Attorney Christopher Taylor, Indian River Shores Mayor Brian Barefoot and recently re-elected councilman Dick Haverland were served with a civil summons today for allegedly violating Florida's open government laws.

Barefoot and Haverland, both charged with non-criminal infractions of the Sunshine Law punishable by a fine not to exceed $500, are to be arraigned April 21, 2015 at 8:30 a.m.

Between July 19 and July 21 of last year, Barefoot and Haverland exchanged a series of emails discussing how the Town arrived at its claim that Shores residents are being overcharged by Vero Electric some $2 million a year.

The email exchange in which the two members of the Shores Town Council discuss public business in violation of the Sunshine Law was first reported by *InsideVero* on August 7. (The *Press Journal* and the island weekly, *Vero Beach 32963*, have over the past seven months chosen not to report on what Taylor described as a "risky email practice/pattern by members of the Indian River Shores Town Government.")

In a March 19 memorandum to State Attorney Bruce Colton, Taylor wrote, "The email exchange between Haverland and Barefoot dated July 19-21, 2014 (see attached "F"), is evidence that the two councilmen violated the Sunshine Law."

Taylor continued, "The public had a right to hear and discuss the information exchanged

between Haverland and Barefoot. The July 21, 2014, email (see attached "H") to Schumann in which Haverland states that "I am not at liberty to discuss the source of the number ($2 million rate differential)" is evidence that Haverland may have believed his email exchange with Barefoot was a violation of the Sunshine Law. Likewise, Barefoot's revelation of the email exchange at the August 29, 2014 regular meeting is evidence that Barefoot may have believed that the email exchange was a violation of the Sunshine Law and that a full discussion concerning the $2 million evaluation at a public meeting was needed."

On August 7, *InsideVero* also reported that Haverland urged Town Manager, Robbie Stabe, to schedule a special call meeting on hiring an attorney at "an extremely inconvenient time – say 7 or 7:30 a.m."

"My guess is no one will come," Haverland added.

Stabe did not follow Haverland's advice. "If Haverland's intentions were implemented," Taylor wrote, "a violation of the Sunshine Law would have occurred."

Taylor added, "Haverland's intention to exclude members of the public from a public meeting may not have been illegal under existing law, but is none the less troubling."

Taylor also expressed concern over the Town's regular practices for handling email correspondence. "A review of several of these emails reveal that individuals such as the Town Clerk, Town Manager, Town Attorney and staff members have a practice of emailing all five members of the IRSTC (as a group) relating information and/or asking for feed-back on issues. This practice could easily result in a discussion of Township business between members of the IRSTC."

Below is the full text of Taylor's memo to Colton:

M E M O R A N D U M

TO: Bruce H. Colton

FROM: Christopher Taylor

RE: Indian River Shores

DATE: March 19, 2015

****

Mark Schumann of Inside Vero.com submitted a complaint with this office alleging possible Sunshine Law violations by members of the Indian River Shores Town Council (IRSTC). Mr. Schumann makes reference to email correspondence in the rendition of the facts of his complaint. This office investigated Schumann's allegations and will present our findings in this memorandum.

In his first allegation, Schumann references two emails written by Councilman Haverland. On

March 6, 2014, Haverland wrote that two Indian River Shore residents, John McCord and Bill Grealis, had been in regular contact "re. the FPL status."(see attached "A"). Schumann believes this indicates that McCord and Grealis had been in regular contact with representatives of FPL concerning the franchise agreement between Indian River Shores Township (IRST) and the City of Vero Beach Electrical Utility (VBEU) on behalf of the IRSTC. On April 7, 2014, Harverland wrote to McCord and Grealis that "I know you two are driving the process." (see attached "B") Schumann believes that this indicates that McCord and Grealis were acting on behalf of IRST in vetting possible candidates in search of a law firm to represent the Town in its then contemplated lawsuit against Vero Beach. Schumann opines that Grealis and McCord were acting as agents of the IRSTC, yet the Town has refused to provide copies of their correspondence with each other and with FPL representatives on this matter. He believes this may be a violation of the Sunshine Law and the Public Records law.

Investigation reveals that both McCord and Grealis have extensive prior experience in the electric utility business. McCord's previous employment history includes owning several companies who specifically assisted industrial clients with the purchase of energy at a greatly reduced rate. Another company McCord owned would provide consulting services for industrial companies who wanted to purchase energy on the open market. Grealis' previous employment history includes being an attorney in the Washington, D.C. area. Grealis assisted in the merger of two electric companies and subsequently became the President of Cincinnati Gas and Electric which was bought out by Cinergy and then Duke Electric Company. Grealis has over twelve years of experience in the utility business.

After investigation, it was determined that neither McCord nor Grealis conducted an independent search for an outside law firm to be hired by IRST. As a resident of IRST Grealis spoke at regular meetings of IRSTC concerning the utility issue and the need for the Town to hire outside counsel that specialized in this area of the law. During the April 24, 2014 meeting of the IRSTC, Robbie Stabe, Town Manager, was tasked to research, select and sign a letter of engagement for outside counsel. Stabe set up phone conferences with a number of firms that specialized in utility issues. Because of his prior work experience, Grealis was asked by Stabe to sit in for a phone conference with the firm Holland and Knight. Also present for the phone conference was Town Attorney Chester Clem. Stabe and Clem wanted someone knowledgeable in the utility field present so that informed, intelligent questions could be asked concerning Holland and Knights qualifications. McCord and Grealis also attended a meeting with Stabe, Clem and Bruce May (attorney for Holland and Knight) for the same reason. During the May 22, 2014, meeting of the IRSTC, if was announced that Stabe had chosen Holland and Knight, that the firm was analyzing IRST's options and would contact Stabe when ready to discuss these options with IRST. Neither McCord nor Grealis were appointed to any fact finding committee, empowered or given any authority to select or appoint outside counsel for IRST.

In Sarasota Citizens for Responsible Government v. City of Sarasota, 48 So.3d 755 (Fla. 2010), the Florida Supreme Court stated that individuals consulted by deputy county administrator while negotiating a memorandum of understanding with a baseball team served an informational role and therefore did not constitute an "advisory committee" subject to requirements of Sunshine Law. More specifically the Court stated:

Because the individuals consulted by Bullock served an informational role, the so-called negotiations team did not constitute an advisory committee subject to the requirements of the Sunshine Law. As explained above, only advisory committees acting pursuant to a delegation of decision-making authority by the governmental entity are subject to the open meetings requirement of section 286.011. Advisory committees functioning as fact-finders or information gatherers are not subject to section 286.011. See Lyon, 765 So.2d at 789; Cape Publ'ns, Inc. v. City of Palm Bay, 473 So.2d 222 (Fla. 5th DCA 1985); Bennett v. Warden, 333 So.2d 97 (Fla. 2d DCA 1976). This is not a situation where Bullock and the individuals he consulted made joint decisions. Dascott v. Palm Beach County, 877 So.2d 8 (Fla. 4th DCA 2004). Instead, these individuals were simply providing advice and information, which does not make the negotiations team a board or commission subject to the Sunshine Law. See, e.g., McDougall v. Culver, 3 So.3d 391, 393 (Fla. 2d DCA 2009) ("[T]he senior officials provided only a recommendation to the Sheriff but they did not deliberate with him nor did they have decision-making authority. Therefore, we conclude that the use of the memoranda did not violate the Sunshine Law."); Jordan v. Jenne, 938 So.2d 526, 530 (Fla. 4th DCA 2006) ("Because the [group] provided only a mere recommendation to the inspector general and did not deliberate with the inspector general, the ultimate authority on termination, we conclude that the [group] does not exercise decision-making authority so as to constitute a 'board' or 'commission' within the meaning of section 286.011, and as a result, its meetings are not subject to the Sunshine Act.").

Because McCord and Grealis served informational roles and were not acting pursuant to a delegation of decision making authority, no Sunshine Law violation occurred. Please see all reports and recordings of interviews for further detail.

Schumann's second allegation also involves Grealis and McCord and their contacts with FPL as expressed in the March 6, 2014, email (see attached "A"). Investigation does not support Schumann's allegation that the March 6, 2014 email indicates McCord and Grealis had been in regular contact with representatives of FPL concerning the franchise agreement between IRST and the City of Vero Beach Electrical Utility (VBEU) on behalf of the IRSTC. The email itself indicates that it was Haverland's belief that McCord and Grealis had been in contact with each other "re. the FPL status." In the past, Grealis had represented IRST on the City of Vero Beach Utility Commission. After his duties on that commission were completed, he still held an interest in the potential sale of Vero's utility to FPL and how that would affect IRST. In May, 2014, McCord and Grealis accompanied Stabe to a meeting with Amy Brunjes (representative of FPL). Grealis stated that he would also take the opportunity to talk with Brunjes whenever she was in Indian River County speaking to the local governmental boards. Investigation does not reveal that McCord or Grealis were acting as "agents" of the IRSTC in their communications with FPL. Please see all reports and recordings of interviews for further detail.

In Schumann's third complaint he alleges that an April 7, 2014 email (see attached "B"), indicates that a meeting was planned on April 8, 2014 between two councilmen, Haverland and Cadden. A closer look at the email shows that only McCord, Grealis and Cadden planned to meet together. Investigation shows that McCord, Grealis and Cadden did meet together and that Haverland was not present.

Schumann next alleges that an email exchange dated March 28-29, 2014 (see attached "C"),

appears to be a violation of the Sunshine Law. On March 27, 2014, a regular meeting of the IRSTC was held. At that meeting Brunjes spoke to the IRSTC in support of the sale of the City of Vero's electric to FPL. IRSTC during the meeting also engaged in a lengthy discussion concerning the Towns options, consulting with a specialized engineering firm, hiring an outside attorney and other topics. (see minutes and recording of March 27, 2014 regular IRSTC meeting) On March 28, 2014, Janet Begley wrote a news article covering the meeting. On the same date, Laura Aldrich (Town Clerk) attached the news article to an email to councilmembers commenting "Like Heather, I don't recall bonds being mentioned. Otherwise, I thought it was a well written article." On the same date, Brian Barefoot (Town Councilman) replied "Tom C (referring to Councilman Cadden) mentioned it in passing and unless u [sic] were paying close attention u [sic] would miss it." On March 29, 2014, Tom Slater (Town Councilman) replied to Barefoot, copying other parties, that "Tom C did mention it and John McCord mention [sic] it in the context that we could sue FMPA and others regarding anti-trust [sic] and limiting their ability to be in the bond market as a very powerful pressure point to get them to the table and cooperate OR [sic] we could actually sue them. John is an expert at this type of action and using it to the benefit of the groups who want independence in their power supply decisions."

The March 28-29, 2014 email represents a risky email practice/pattern by members of the Indian River Shores Town Government. Numerous emails were collected from IRST pursuant to this investigation. A review of several of these emails reveal that individuals such as the Town Clerk, Town Manager, Town Attorney and staff members have a practice of emailing all five members of the IRSTC (as a group) relating information and/or asking for feed-back on issues. This practice could easily result in a discussion of Township business between members of the IRSTC. This is what appears to have happened in the March 28-29, 2014 email exchange.

Although the email exchange appears to violate the Sunshine Law, proof problems exist that tend not to support a prosecution in this instance. The context of the email indicates that Barefoot was responding to the email from Aldrich who is not a member of the IRSTC. In regards to Slater, the email shows that he was responding directly to what Barefoot had stated to Aldrich. The email exchange does not show a clear "discussion" of a subject, outside of a properly noticed meeting, concerning an issue that could come before the IRSTC for formal action. See Florida Statute 286.011. Therefore, because the evidence does not show a clear violation of the Sunshine Law, a prosecution will not be pursued.

Schumann in his fifth complaint references an email dated April 24, 2014 (see attached "D"), in which Haverland states "Looks like Weick (Town Councilman Gerry Weick) wasn't in the loop." Schumann is apparently alleging that members of the Council, other than Weick, had discussions outside the Sunshine concerning the hiring of outside counsel for IRST. The minutes of regular meetings of the IRSTC, prior to April 24, 2015, show that the hiring of outside counsel was discussed (see all reports for further detail). Investigation did not reveal evidence of discussions between councilmen outside of the Sunshine in regards to this issue.

In his sixth complaint, Schumann includes an email from Haverland to Stabe dated April 14, 2014 (see attached "E"), in which Haverland encouraged Stabe to schedule a public meeting

for "an extremely inconvenient time, say 7 or 7:30 am" so that members of the public would not notice or likely attend. Haverland also advised Stabe to to be "very unspecific as to agenda item." In that way, Haverland wrote, "I think it would have a good chance to escape notice."

Investigation reveals that Stabe did not follow Haverland's advice/direction and that the April 24, 2014 meeting occurred at its regular time. Haverland's intention to exclude members of the public from a public meeting may not have been illegal under existing law, but is none the less troubling. The Sunshine Law should be construed so as to frustrate all evasive devices. Wood v. Marston, 442 So.2d 934, 938 (Fla.1983). This is especially true even when a board member does not wish the public to know of a particular action because he believes it is ultimately in their best interests. In the spirit of the Sunshine Law a board should be sensitive to the community's concerns that it be allowed advanced notice and, therefore, meaningful participation on controversial issues coming before that board. See AGO 03-53. The Sunshine Law mandates that members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission. Herrin v. City of Deltona, 38 F.L.W. D1767 (Fla. 5th DCA August 16, 2013). If Haverland's intentions were implemented, a violation of the Sunshine Law would have occurred.

Finally, Schumann alleges that an email exchange between Haverland and Barefoot on July 19-21, 2014 (see attached "F"), violated the Sunshine Law. At the July 18, 2014 regular meeting of the IRSTC, Bruce May, outside legal counsel for IRST and partner with the law firm Holland and Knight addressed the Council and presented his evaluation of the legal options available to protect the Town's residents regarding electric rates charged by the City of Vero Beach. To facilitate the analysis May hired a consultant, Mr. Terry Deason, a utility rate expert and the former Chairman of the Board of the Public Service Commission. May stated that research shows that Town residents collectively are paying $2 million more per year under Vero's utility than if they were under electric service by FPL. At the end of the meeting, IRSTC voted to authorize legal counsel to file a lawsuit against the City of Vero Beach structured around the causes of action May outlined. IRSTC also voted to initiate intergovernmental conflict resolution procedures with the City of Vero Beach that would involve mandatory conference and mediation procedures set forth in Florida's Governmental Conflict Resolution Act. On this same day, after the meeting, an email exchange began between Schumann and Haverland. This exchange is the first group of emails that need to be considered in addressing this issue and are dated July 18-19, 2014. (see attached "G"). Schumann, at one point criticizes IRSTC for initiating a lawsuit against the City of Vero Beach by stating "If nothing else, the filing of this lawsuit proves the Town of Indian River Shores has money to burn." Haverland defends the actions of the Town and the money authorized to be paid to Holland and Knight by stating that IRST residents would save $2 million per year forever. The email exchange continued from July 18, 2014, to July 19, 2014, the content of which centered on the $2 million figure and how that figure was arrived at. The last email in this exchange is July 19, 2014 at 12:31pm. On July 19, 2014, at 12:56 pm, Haverland sends an email to Barefoot asking the source of the $2 million figure. This email exchange between Haverland and Barefoot continues until July 21, 2014, which shows the two councilmen discussing the $2 million figure and how it was arrived at. (see attached "F"). Haverland initiates the exchange by asking Barefoot "Do you know what the source of the $2 million difference was?" Barefoot responds by stating "I do not. In his original draft remarks he had $3 million but I asked him to reduce it to $2 myn [sic]

because I don't want us accused of exaggerating." Investigation reveals that prior to May's presentation at the July 18, 2014 regular meeting of the IRSTC, Barefoot met with May and Deason and discussed the issue of overpayment to Vero's utility. May and Deason told Barefoot that the overpayment was as much as $3 million. Barefoot wanted to err on the side of caution and asked that May quote a $2 million figure during his presentation to IRSTC. The email exchange continues with Haverland informing Barefoot that Schumann in an Inside Vero news article is claiming that the $2 million figure "is suspect." Barefoot replies that "The analysis was done by our expert, the past Chairman of the PUC, who claims the number is in excess of $3 myn [sic] due to the size of the home etc. vs [sic] other parts of the county. All the detail should come out during the mediation process." Haverland responds "Great. The more Mark Schumann is wrong, the less credibility he will have. He has a pretty close following, including Winger and Graves." This last exchange between Haverland and Barefoot is dated July 21, 2014, at 2:51 pm. On July 21, 2014, at 3:06 pm, Haverland sends an email to Schumann stating "I am not at liberty to disclose the source of the number (see attached "H"). Based on information I was made privy to, I believe the number is, if anything, an understatement. This figure's derivation will be made clear to everyone in the mediation process." In an interview pursuant to this investigation Barefoot stated that in hindsight, he believes that he should not have responded to Haverland's email, even though the question was regarding an issue previously brought before the IRSTC.

Sometime after July 21, 2014, Schumann made a public records request with IRST and received a printout of the email exchange between Haverland and Barefoot dated July 19-21, 2014 (see attached "F"). Subsequently, Schumannn wrote a news article publishing the email exchange asserting that Haverland and Barefoot may have violated the Sunshine Law. During the August 29, 2014 regular meeting of the IRSTC, Barefoot, pursuant to the agenda item "Update on Conflict Resolution Process (Bruce May)" addressed the news article written by Schumann, the email exchange between Schumann and Haverland, and the email exchange between himself and Haverland. (see attached "I" the Minutes of the August 29, 2014 regular meeting of the IRSTC). Barefoot explained that the email exchanges involved the subject of the $2 million rate differential and how it was calculated. Barefoot stated, that in an abundance of caution, he wanted to make the Council and the public aware of the email communications so that the Council and the public could have the opportunity to discuss the reporter's question, and the facts relating to that question, during the open and public meeting. Barefoot then asked if May would explain to the Council and for the record, how this $2 million differential was calculated. May then addressed the IRSTC and stated that the $2 million rate differential was developed by Deason. May stated that he believed that Deason's estimate was conservative.

The email exchange between Haverland and Barefoot dated July 19-21, 2014 (see attached "F"), is evidence that the two councilmen violated the Sunshine Law. It is clear that the $2 million rate differential calculation is the basis and central feature of IRSTC's lawsuit against the City of Vero Beach, as well as the conflict resolution process. The lawsuit or conflict/mediation process is a subject that could come before the board for official action. Barefoot admits in the email that the differential rate calculation would be introduced during the mediation process in great detail. The fact that May and Deason originally calculated a $3 million differential was never discussed at a public meeting, but it was discussed by Haverland and Barefoot. The fact

that Barefoot asked that the $3 million differential be lowered to $2 million was not discussed at a public meeting, but it was discussed by Haverland and Barefoot. The reasons why Barefoot asked May and Deason to lower the evaluation to $2 million was never discussed at public meeting, but it was discussed by Haverland and Barefoot. The public had right to hear and discuss the information exchanged between Haverland and Barefoot. The July 21, 2014, email (see attached "H") to Schumann in which Haverland states that "I am not at liberty to discuss the source of the number ($2 million rate differential)" is evidence that Haverland may have believed his email exchange with Barefoot was a violation of the Sunshine Law. Likewise, Barefoot's revelation of the email exchange at the August 29, 2014 regular meeting is evidence that Barefoot, may have believed that the email exchange was a violation of the Sunshine Law and that a full discussion concerning the $2 million evaluation at a public meeting was needed.

The Sunshine Law applies to any gathering of two or more members of the same board to discuss some matter which will ***foreseeably*** [emphasis added] come before that board for action. Florida Statute 286.011. It has been stated that the application of the Sunshine Law is not limited to meetings at which final, formal actions are taken. See AGO 2001-20. Rather, it applies to any gathering where members deal with some matter on which foreseeable action will be taken by the board. See Board of Public Instruction of Broward County v. Doran, 224 So. 2d 693 (Fla. 1969). Florida courts have recognized that it is the ***entire*** [emphasis added] decision-making process that is covered by the Government in the Sunshine Law, not merely meetings at which a final vote is taken. Canney v. Board of Public Instruction of Alachua County, 278 So. 2d 260 (Fla. 1973).

In Times Publishing Company v. Williams, 222 So. 2d 470, 473 (Fla. 2d DCA 1969), disapproved in part on other grounds, the Court states that in enacting a new statute declaring that all meetings of any board or commission at which official acts are to be taken must be public meetings, it is the entire decision-making process that Legislature intends to be affected by statute. Further, since every step in the decision-making process, including the decision itself, is the necessary preliminary to formal action, each such step constitutes an "official act" and an indispensable requisite to "formal action" within meaning of statute. Florida Statute 286.011. Similarly, in Neu v. Miami Herald Publishing Company,462 So. 2d 821 (Fla. 1985), the Court stated:

Petitioners' broadest argument, and the one most fervently pressed, is that this Court's decisions in Doran and Berns have effectively strangled the political process in Florida and forced political bodies and officials to evade the Sunshine Law, as interpreted, in order to make the political process function. On this point, petitioners' arguments go beyond the issue here of consultations with attorneys on pending litigation to ask that we recede completely from Doran and Berns. Essentially, petitioners would have us read section 286.011 narrowly and hold that it applies only to the climatic meetings where official actions and acts are approved by the governing body. We have recently articulated why we will not adopt such a reading in Wood v. Marston, 442 So.2d 934 (Fla.1983), and will not repeat the reasons here. One can argue and reargue whether the broad reading of the Sunshine Law in Doran and its progeny is politically wise. The fact remains that Doran was rendered fifteen years ago and placed the legislature and all concerned on notice of our broad reading of section 286.011...Every step in the decision-making process, including the decision itself, is a necessary preliminary to formal action. It follows that each such step constitutes an 'official act,' an indispensable requisite to 'formal action,'*

within the meaning of the act.

March 25: Obituaries

Ray of Hope: Sacred work

4 comments

Burke Brendan says:
MARCH 25, 2015 AT 12:27 PM
Great investigative work ! Glad to see some jounalistic honesty in this town !

John E Church says:
MARCH 25, 2015 AT 1:16 PM
Who can believe anything these two will say in the future? A wider net may catch more fish.

John Wester says:
MARCH 25, 2015 AT 2:19 PM
S U R P R I S E!!!!!!!!!!!!

Bea Gardner says:
MARCH 25, 2015 AT 9:24 PM
It's about time…but this will not stop the conversation out of the sunshine. They will now just stop e-mailing and find other ways of communicating with each other besides the internet. What a bunch of arrogant fools.

Shores officials fined for Sunshine law violation

BY: Dan Garcia, Special to Treasure Coast Newspapers
POSTED: 1:21 PM, Apr 21, 2015
UPDATED: 3:59 PM, Apr 21, 2015
TAG: indian river county (/topic/indian+river+county) | shaping our future (/topic/shaping+our+future) | indian river shores (/topic/indian+river+shores) | tcp (/topic/tcp)

VERO BEACH — The mayor of Indian River Shores and a town councilman were fined $200 each on Tuesday and ordered to study an educational program about the Florida Government-in-the-Sunshine law after they pleaded no contest to discussing town business by email.

Ex-cop says DeFuniak council violated Sunshine Law

By TOM McLAUGHLIN | Daily News
Published: Thursday, April 16, 2015 at 15:32 PM.

A former DeFuniak Springs police captain has filed a civil lawsuit claiming City Council members met in violation of the Sunshine Law to plot his firing.

David Krika says he was fired in 2012 after he pointed out "anomalies" — including evidence of Sunshine Law violations — in a city manager candidate's application process.

Krika's attorney, Stephen Webster, said what he has seen of City Council members flaunting open-meeting laws boggles the mind.

"It's so brazen. There just doesn't seem to be any respect for the law," Webster said. "It's not right. It's just not right."

The first alleged Sunshine Law violation cited in the lawsuit occurred Sept. 10, 2012, when the council convened to act on DeFuniak Springs City Marshal Mark Weeks' recommendation that Krika be fired.

At that meeting, Councilman Mac Work, responding to a city resident's inquiry as to why the council would vote on a police chief's personnel move, answered, "We are concurring with his recommendation."

"Unfortunately," the lawsuit states, "Councilman Work notified the audience of the council's decision prior to the official vote being taken."

It claims "several witnesses" saw council members discussing the firing before the meeting convened.

The Sunshine Law bars elected members of a government body from discussing issues they could be asked to vote on when they are outside a publicly noticed meeting.

Santa Rosa County Commissioner Bob Cole recently was sanctioned for having a conversation with a fellow member of a civic improvement board. Cole's conversation took place just prior to a meeting being called to order.

Work, who lost his City Council seat in a Tuesday election, denied ever violating the Sunshine Law in 15 years of public service.

"I'm not worried about that lawsuit. I'm not guilty of anything," Work said.

DeFuniak Springs City Attorney Clayton Adkinson, who had not looked at the lawsuit in depth, said: "I don't understand what he (Krika) is trying to do. He's saying someone made one comment and that suggested the council had met in secret."

The reason the council was even considering Krika's termination, the lawsuit alleges, is that City Marshal Weeks had decided to fire him for taking evidence of suspicious city activity to the FBI.

It says Krika was assigned to do a background check on a city manager candidate.

"The council violated the Sunshine Act by having private discussions regarding (the candidate's) candidacy for the position of city manager," the lawsuit says.

The candidate ultimately withdrew his name from consideration for the city manager's job.

The suit also hints at widespread corruption in Walton County.

Webster said his suspicions of local government in Walton County run so deep he chose to file a civil suit and face a judge trial rather than seek criminal sanctions for the alleged Sunshine Law violations.

"I don't have much faith in anybody over there," he said.

DeFuniak Springs council members Ron Kelley and Kermit Wright, both of whom were elected in 2011 and won re-election Tuesday, denied ever being party to Sunshine Law violations.

"The Sunshine Law is a communist plot straight out of Stalin. I don't like it or anything that restricts free speech. It's against everything I stand for," Wright said. "I hate it, but I'm not going to jail for it. It's a law I despise, but I have to honor it."

Wright said he has gone so far as to remove the telephone numbers of fellow council members from his phone. He said he purposely sits in his truck on meeting nights until just before they start to avoid contact with anyone beforehand.

The Krika lawsuit requests that a judge order the city to desist from "engaging in any further actions which violate the Sunshine Act." It also requests that Krika's attorney fees be paid along with "all other relief deemed equitable."

Adkinson said he will turn the lawsuit over to counsel for the Florida League of Cities.

Contact Daily News Staff Writer Tom McLaughlin at 850-315-4435 or tmclaughlin@nwfdailynews.com. Follow him on Twitter @TomMnwfdn.

Washington County NEWS Holmes County Times Advertiser

Caryville caught up in Sunshine Law violation

By JENNIFER RICH
Published: Friday, March 6, 2015 at 18:13 PM.

CARYVILLE — Caryville Town Council gathered for an emergency meeting Tuesday that was called to impose an immediate cease to excavation of land controlled by the town.

A premature decision by council chairman Henry Chambers created a problem with multiple layers when he hired a timber company on the town's behalf without the council's backing in a manner that did not follow proper legal protocol.

"The Sunshine Law has been broken," said council member Nora Curry. Florida's Sunshine Law exists to ensure open government and that all dealings stay transparent among boards, commissions and other governing bodies in state and local agencies.

A chain of events that left the council at odds began to align last month, when Chambers requested a quote from Sapp's Land & Excavation on what the company would pay the town for merchantable wood.

On Feb. 5, Chambers met with company Vice President Jeremy Sapp to convey the town's need to have tree debris removed after another logging company partially cleared parcels of land. Sapp proposed a figure, and Chambers said he would run the information by the council in the next meeting, which was set for Feb 10.

In that meeting less, the topic of hiring a company to chip and haul away the debris came up for discussion. Chambers shared he'd looked into some options and had a company in mind that would pay the town $50 per ton.

This quote intrigued council members, but no motions were made to put the project up for bid or to hire a specific company.

Despite not having an official vote from the Town Council, on Feb. 25, Chambers signed a general timber sales agreement giving timber rights to Sapp's Land & Excavating, Inc. on 316 acres of specified tracts of land. The company moved in heavy equipment the following day and had cleared away about 25 acres when council member Timothy Hanes was alarmed to learn the work was already in progress.

"Hundred-year-old oaks are being cut out there," Hanes said. "Our grandkids are not going to see them."

Hanes's biggest concern was some of the town's more historical and environmentally beneficial trees were being cut when the council's prior discussion clearly specified that no more trees would come down.

His second point of contention was with decimal placement in the pay rate on the contract. Instead of $50 a ton as Chambers mentioned in last month's meeting, the chairman signed an agreement for the timber company to compensate the town at rate of 50 cents per ton.

"I made a mistake," Chambers said.

Hanes and Curry agreed with this statement and had other questions for the chairman.

"Where did you get the authority to go into this contract with these people on your own?" Curry asked.

Chambers asked Curry to refer to the previous meeting's minutes in which discussion about the council's desire to have the work completed as discussed. Town clerk Jewette Tadlock had not completed the minutes, leaving Curry to point out another error in the city's operation.

"We discussed it and were going to get bids on it. This contract we entered into here hasn't been brought before the board. What we discussed was for somebody to come in and clean up what was on the ground. No standing timber would be cut," Hanes said.

Council members went back and forth for several minutes about what they'd previously agreed on for the scope of work to be completed.

"Well anyway, what have they done wrong cutting the wood?" Chambers said.

Hanes said newly planted pines and long-standing trees had been cut and he wanted to see the work to stop immediately before more hardwood was lost.

Chambers maintained what had been cut down was scrap. Hanes disagreed, pointing out that he'd seen the trees go down that were too wide for the chipper.

Hanes made a motion to have Sapp stop the cutting, and it was seconded by Curry. Chambers and council member Ransom Works voted for the work to continue. Since one in the five member council, James Taylor, was missing at Tuesday's meeting, the vote was split.

After the stalemate vote and a bit of silence, Hanes asked Works how he felt.

"I'm really not in this right here. I expect to do the right thing, but seeing so much controversy going on in Caryville now, I can understand the town trying to get money," Works said. "And I see what Mr. Chambers was trying to do to keep the revenue coming in, but I understand where the rest of the town is coming from."

Works pointed out land bought by the Federal Emergency Management Agency after the town flooded in 1994 was returned to the town for its use with certain stipulations, one of them being the land would be kept clear.

Sapp interjected to clear up questions about the work in progress.

"What we're doing will take it from a site that's unusable to a site that can be sprayed

and planted and turned back into something that's going to generate revenue for the city in 10 to 12 years," he said.

Sapp said the company used best management practices outlined by the Northwest Florida Water Management District to prevent stripping of topsoil that could end up in Choctawhatchee River.

Curry was still concerned with who was going to clean up debris after Sapp's company was finished, since he specified any remaining treatment the property needed in the form of herbicides or removing barriers to replanting was not his company's responsibility.

After over an hour of discussion among the council and contractor, a motion was passed to have Sapp continue work. The contract was amended to include special provisions in which oak trees larger than twenty inches in diameter at chest height shall remain and 30 acres of planted pines specified shall remain uncut.

Hanes made a final suggestion to the council that they change the policy on how many council member signatures would be required to employ a contract on the town's behalf in the future.

Sapp tried to shed light on how much revenue the project would generate for the town. He said the current work load is yielding $14 per truck load and the town stood to profit about $1,400 a week for a month of projected work, depending on weather and other issues.

Sapp said the only forest product he knows of going for $50 is pine telephone poles.

Chambers was relatively quiet throughout the meeting as his constituents expressed dissent over his impulsive decision to hire the company without a bidding process or a public council vote and his blatant disregard for Sunshine Law's requirement for such actions to occur in a transparent manner.

The amendment was made to the existing contract and signed off by Sapp, Curry and Hanes.

By the end of Tuesday, Sapp shook hands with Hanes as he handed over a roll of fluorescent tape for the town to mark any trees they'd like preserved as land clearing goes on.

"We need to be looking at the future, not the here and now payday," Hanes said. "I understand the town needs money, but we don't need it that bad."

EDITOR'S NOTE: In addition to apparently violating the Florida Sunshine Laws by moving forward with the contract, the Town of Caryville, which is currently without a town attorney, appears to also be in violation of the law by failing to give the public or The Washington County News proper notice of the called meeting. The Florida Sunshine Law (section 286.011 of Florida Statues) mandates that all government meetings at which official business or acts of Council are to take place are subject to Florida Sunshine Law requirements, including that "reasonable advance notice" be

given, not less than 24 hours. The News was notified by a chance call from Councilman David Hanes, just an hour prior to the called meeting. Look for an editorial on this issue by News Editor Carol Kent Wyatt in the March 11 edition of the Washington County News. The town's actions could be subject to a court challenge. If proven to be in violation, those actions could be overturned, resulting in considerable cost in time and legal expenses to taxpayers.

Financial News & Daily Record

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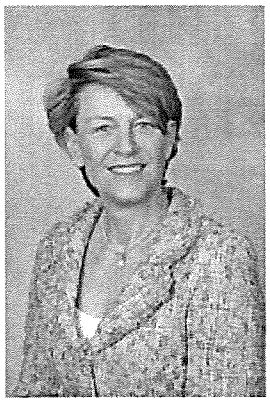
DVI will have 'cure meeting' to fix Sunshine Law issues with hiring of executive director

Tuesday, April 14, 11:13 AM EDT

By Max Marbut, Staff Writer



Debbie Buckland, chair of DVI's board, said members will receive training in Sunshine Law requirements.

Downtown Vision Inc.'s selection committee will meet next week to again choose an executive director, this time at a public meeting.

Last week, Jacob Gordon from Camden, N.J., was selected by the committee to replace Terry Lorince.

However, the choice was discussed by committee members during telephone conversations and the decision was not made in a public meeting.

Both violate the state's Sunshine Laws that require those conversations and decisions occur in public, as reported Friday by the Daily Record. The violations made the committee's choice voidable.

The group will convene April 22 in a publicly noticed, open meeting to reconsider candidates and re-select the organization's next chief executive.

Board Chair Debbie Buckland said Monday she is calling for the properly noticed "cure meeting," which will give the public the opportunity to witness and participate in the selection process.

Asked why the meeting will be scheduled seven days after the notice instead of only 24 hours as required by the Sunshine Law, "We want to make sure the public has plenty of time to attend (the meeting)," she said.

Buckland also said city staff will conduct Sunshine Law training for DVI's board members, all of whom are volunteers. The training probably will occur at the regularly scheduled board meeting May 27.

Alexis Lambert, director of the city Office of Public Accountability, will present an overview of Sunshine Law

requirements.

The presentation will address topics such as notice requirements, making meeting minutes available to the public and "what and when and where discussions may take place," she said.

It's a 15-20 minute presentation, followed by questions.

"Different boards have different questions," said Lambert, who is an attorney. "Each board has its own needs."

Buckland said she and the committee members did not realize they weren't adhering to open government laws when they made the decision regarding the new executive director.

"Whatever violations we committed were certainly not intentional," said Buckland. "We're going to have a cure meeting and put this behind us."

Between the committee's April 1 meeting with four finalists and April 9, when the announcement was made that Gordon had been hired, there were no public meetings of the committee or the board.

Committee Chair Pat McElhaney said last week he had discussed the final candidates with committee members, including via telephone conversations, between the two public meetings.

Florida law provides that no resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting.

The remedy, according to the 2015 Sunshine Law manual published and distributed to the public by the state Attorney General's Office, is for the committee to reconvene in a public meeting to consider the candidates and vote again to select a new executive director.

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▶ Fed knows consumers are 'hugely important' to growth

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State Attorney investigating Cooper City officials for possible Sunshine Law violation

By Brian Ballou
South Florida Sun-Sentinel

APRIL 7, 2015, 7:33 PM | COOPER CITY

The State Attorney's Office is wrapping up an investigation into whether some Cooper City officials violated the state's Sunshine Law during a 2012 meeting, according to an office spokesman.

The investigation is expected to conclude within several days. Spokesman Ron Ishoy would not comment on specifics.

But according to City Commissioner John Sims, the investigation focuses on an April 12, 2012, meeting in the city manager's office in which commissioners, city staff and representatives of the Optimist Club of Cooper City were present.

Sims said he wasn't at the meeting because he didn't know about it. He said the meeting wasn't advertised in the customary manner — on the city's website calendar and on an electronic sign at City Hall. Sims said he usually receives emails from city staff about upcoming meetings, but didn't receive one in this instance while all other commissioners were notifed by email.

Email records of the meeting listed basic details: 10 people attended, including former Mayor Debby Eisinger, three commissioners, city staff and members of the Optimist Club. They discussed issues regarding playing field maintenence and preparation.

Sims said he didn't find out about the meeting until seven months later when a supporter, Skip Klauber, showed him emails he had received as part of a public records request for unrelated documents. Klauber, a retiree and local activist, susequently contacted the State Attorney's Office.

Eisinger said the meeting adhered to the Sunshine law.

"All meetings were properly advertised, there was absolutely no wrongdoing," she said.

On Jan. 8, 2014, David Wolpin, with the city attorney's office, told Sims in a letter, "I believe the 2012 meeting complied with each of the requirements of the Sunshine Law." He said public notice was posted on a bulletin board at City Hall, that the city manager kept minutes, and that the meeting was open to the public.

The inquiry marks the second time in nine years that Cooper City officials have been scrutinized for possible violations of Florida's open meetings law. In 2006 the Florida Department of Law Enforcement investigated five Cooper City commissioners in connection with an Aug. 22, 2006, gathering at a bar, but concluded the officials did not violate the law by discussing city issues privately.

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Cooper City officials cleared in public meeting inquiry

By Brian Ballou
South Florida Sun-Sentinel

APRIL 28, 2015, 7:55 PM | COOPER CITY

A meeting three years ago between city officials and members of the Optimist Club of Cooper City didn't violate Florida's open meetings law, the State Attorney's Office has determined after a 14-month investigation.

The results of the investigation were released Monday and immediately denounced by Cooper City Commissioner John Sims. He said city officials, including then-mayor Debby Eisinger, conducted a "behind the scenes" meeting on important city business without properly informing the public. Sims said he found out two years later that the meeting had occurred.

"They methodically and deliberately kept this from the public and myself, in my opinion," Sims said.

Assistant State Attorney Timothy Donnelly stated that the city, by posting a notice at City Hall, did meet the requirements of the Sunshine Law, albeit minimally.

"As an aside, while posting a notice in City Hall may not be the best means of announcing a commission meeting, it does technically comport with the Sunshine Law," he stated.

Four commissioners did receive email reminders prior to the April 2012 meeting, as did the city attorney and members of the Optimist Club of Cooper City, a non-profit organization that runs at least eight sports leagues in the city. Sims did not receive an email notification. Ten people attended the meeting.

Donnelly said that while email notifications of meetings to city officials aren't required under the law, they "appear to be a much more [efficient] means of informing the commissioners of a meeting."

Commission secretary Carol Adams was interviewed during the investigation about whether she was instructed to leave Sims' name off the emails. She told investigators she could not remember whether Eisenger told her to leave off Sims.

The investigation was sparked by retiree and local activist Skip Klauber, who after requesting public records from City Hall on an unrelated matter, noticed a string of emails in the files he received that referred to the April 2012 meeting. The Broward State Attorney's Office started investigating on Feb. 21, 2014

The city has had a longstanding agreement with the Optimist Club, spelled out in a resolution that has been amended by the commission several times, the latest on July 30, 2012. Prior to that date, the city received money from the club mostly through sports league participation fees charged to non-residents.

The newly amended resolution allows the club to keep those funds to pay for costs related to running the program.

Sims said he was did not know that the fee agreement had been modified when he voted in favor of the resolution, because "they hashed it out at the April meeting and I wasn't there."

Commissoner John Curran said he attended that meeting but there was no discussion of the fee structure at that time.

The investigation also found that the resolution was legally passed.

"The money that now goes to The Optimists, as opposed to the city, is not a crime," Donnelly said.

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THE ST. AUGUSTINE RECORD

Scott, Cabinet face lawsuit alleging Sunshine Law violations in Bailey ouster

Posted: February 5, 2015 - 12:38am

By TIA MITCHELL

tia.mitchell@jacksonville.com

TALLAHASSEE — The abrupt resignation of the chief of Florida's crime-fighting agency prompted media and open government advocates to file a lawsuit accusing Gov. Rick Scott and the Cabinet of violating state Sunshine Laws.

The Florida Society of Newspaper Editors (FSN), the Associated Press, Citizens for Sunshine and a St. Petersburg lawyer teamed up Wednesday to ask a Leon County court to rule that Scott's ouster of Florida Department of Law Enforcement Commissioner Gerald Bailey subverted open meeting laws.

"The Governor violated the Sunshine Law by using conduits to engage in polling, discussions, communications and other exchanges with other members of the Cabinet regarding his unilateral decision to force the resignation of the FDLE Commissioner and appoint a replacement without any notice to the public, without any opportunity for the public to attend, and without any minutes being taken," the lawsuit said.

"The Times-Union has joined the lawsuit as plaintiffs, along with the Associated Press and the Florida Society of News Editors and open-government advocates," said Frank Denton, the newspaper's editor and president of FSN.

The lawsuit argues that aides for Scott, Attorney General Pam Bondi, Chief Financial Officer Jeff Atwater and Agriculture Commissioner Adam Putnam acted with delegated authority to communicate on their bosses' behalf knowing the matter would come up for a vote at a public Cabinet meeting. The plaintiffs asked the court not only to declare Sunshine Laws were broken but to prohibit the future practice of using Cabinet aides to act as conduits to the governor's office.

One plaintiffs, attorney Matthew Weidner, previously sent a complaint letter to Tallahassee State Attorney Willie Meggs last week asking him to investigate whether Scott and the Cabinet broke open meeting laws. Meggs declined to act, citing a lack of hard evidence.

The First Amendment Foundation of Florida took the separate action Wednesday of supporting previous statements by Bondi that transparency issues surrounding Bailey's resignation deserved greater attention.

"You have called for an outside investigation and expressed your own concern that this state's Sunshine Laws might have been violated in the handle of the FDLE issues," President Barbara Petersen wrote Wednesday. "The Foundation supports the appointment of an independent state attorney from outside Leon County to investigate this matter, to consider whether criminal charges should be brought and to issue a written report with findings."

Various statements from Scott and the Cabinet members since Bailey's ouster have only created additional uncertainty about what happened behind the scenes, Peterson wrote.

"While the officers have stated they were blind-sided by Mr. Bailey's ouster, the Governor, in one of his few media interviews on the issue, seemed to concede that the law was violated," she said.

None of this may have ever come to light if Bailey had not complained to the Tampa Bay Times/Miami Herald Tallahassee Bureau after his replacement was approved at the Jan. 13 Cabinet meeting. He told the papers that the governor misled Cabinet members into believing he resigned voluntarily, and he later outlined why his relationship with the governor's staff had diminished, especially while Scott was campaigning.

for a second term.

All three Cabinet members have said they now believe Bailey was treated unfairly and want to establish better procedures for the future when the governor wants to replace agency heads who also have Cabinet oversight. Scott has already said he wants to replace at least three more people: Insurance Commissioner Kevin McCarty, Office of Financial Regulation Commissioner Drew Breakspear and Department of Revenue executive director Marshall Stranburg.

Scott and the Cabinet are in Tampa on Thursday for a regularly scheduled meeting where picking up the pieces of the Bailey fallout is at the top of their agenda.

They will start the morning with ceremonial duties at the Florida State Fair, including flipping a switch to turn on the lights of the midway and sampling produce and other "Fresh from Florida." The business meeting begins at 9 a.m. where they will begin discussing a new process for how they will evaluate agency heads and fill vacancies when they arise.

Your rating: None

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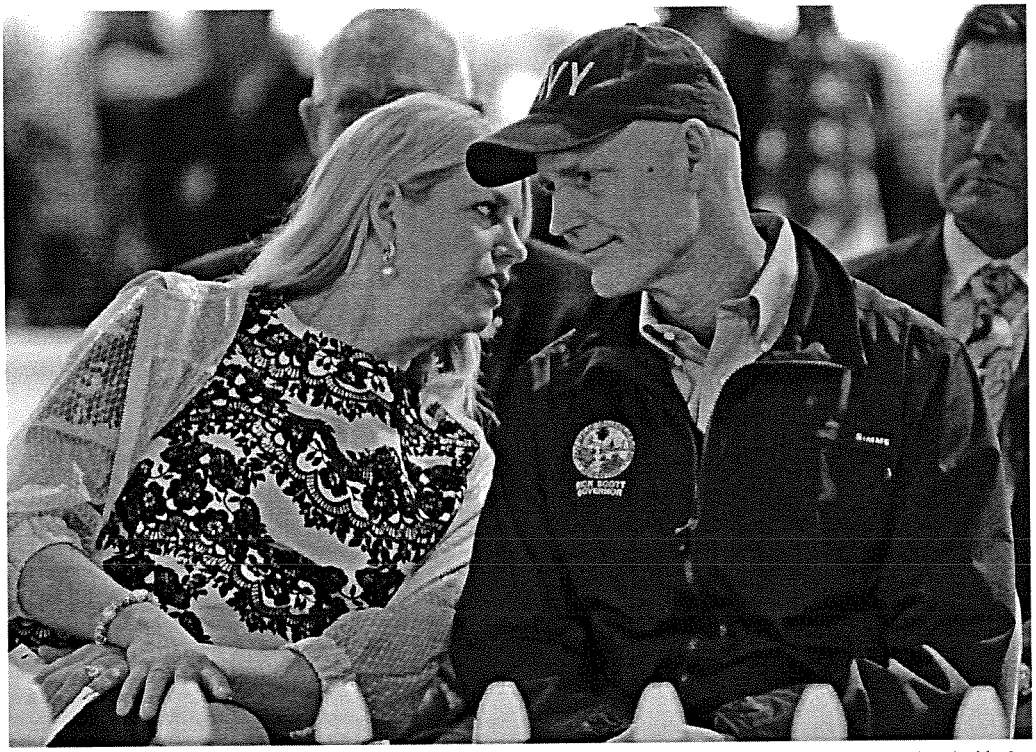
Opinion Staff

Did Rick Scott and the Florida Cabinet violate the Sunshine Law?

February 10, 2015 | Filed in: **Florida, Politics, Scandals, Uncategorized.**



Florida Gov. Rick Scott, right, talks to Attorney General Pam Bondi before speaking to a group of veterans at the Florida State Fair, Thursday, Feb. 5, 2015, in Tampa, Fla. Scott said Thursday in a statement at a meeting of the governor and Cabinet, that he mishandled the ouster of Gerald Bailey, the head of Floridas main law enforcement agency. (AP Photo/Chris O'Meara)

"It has been a longstanding convention for Governor's staff to provide information to cabinet staff."

That bland bureaucrat-speak, emailed to media by Scott's press office on Jan. 28, was supposed to expound on Scott's argument that it wasn't a Sunshine Law violation for the governor to use go-betweens to secretly remove

Did Rick Scott and the Florida Cabinet violate the Sunshine Law?

that unpleasant public discussions can be avoided, right?

A new lawsuit alleges it is.

Instead of excusing Scott's behavior, the bland "longstanding convention" excuse triggered something else: It has motivated Florida's news organizations to fight in court for the public's right to know what their government officials are doing.

On Feb. 3, a coalition including the Florida Society of Newspaper Editors (of which the Palm Beach Post is a member), the Associated Press, Citizens for Sunshine, Inc., and attorney Matthew Weidner jointly filed suit in Leon County Circuit Court against Scott and the Cabinet.

Article 1, Section 24 of the Florida Constitution reads in part, "All meetings of any collegial public body of the executive branch of state government or of any collegial public body....at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public."

The lawsuit alleges Scott forced the resignation and selected a replacement of the state's top police officer, Gerald Bailey, without notice to the public, without an opportunity for the public to attend, and without taking minutes.

Further, the lawsuit seeks an injunction against further violations, citing the "longstanding convention" email as evidence that back-room deals have been happening regularly at the Cabinet, and must be stopped.

What do you think? Did Scott and the Cabinet violate the state's Sunshine Law?

VIEW COMMENTS 1

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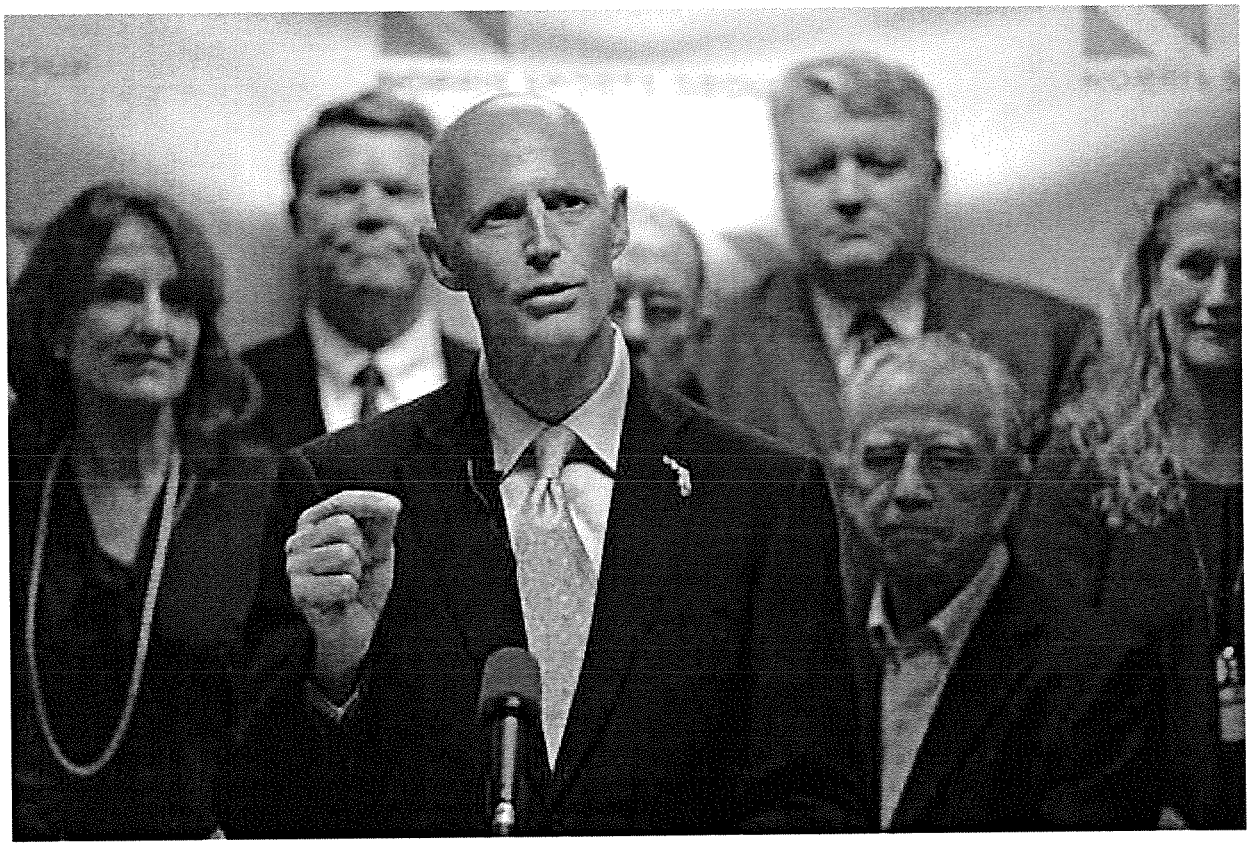
Should Florida reform or retire its Enterprise Zones Program? NEXT >

Bradenton Herald
Gov. Rick Scott hires law firm to handle Sunshine violation claims

By MICHAEL AUSLEN

Herald/Times Tallahassee BureauMarch 31, 2015



Florida Gov. Rick Scott speaks at a news conference at Norris Sports Group on Friday, March 27, 2015, in Naples, Fla. Florida's unemployment rate is dropping slightly. New numbers released Friday show that the state's unemployment rate for February was 5.6 percent. That's a drop of 0.1

percent from January. Scott announced the new jobs numbers during his visit to the sports marketing company. DAVID ALBERS NAPLES DAILY NEWS

TALLAHASSEE -- Accused of Sunshine Law open meeting violations, Gov. Rick Scott and Cabinet members Tuesday hired a law firm to represent them — an action that in itself should have been handled more openly, some lawyers said.

In a nine-minute meeting, the four statewide officials voted to spend up to $50,000 of tax dollars with the Tallahassee law firm Shutts & Bowen and attorney Daniel Nordby, who also represents the Republican Party of Florida.

Nordby will represent the Cabinet, the fifth named defendant in a lawsuit filed by more than a dozen Florida news outlets following the forced ouster of a top state law enforcement official. He was recommended by Attorney General Pam Bondi, a Cabinet member who collected applications from five firms and settled on Nordby after consulting with her staff.

"Proposals were collected and posted online for the public and Cabinet to review, and the Governor and Cabinet made the decision to hire the counsel in an open and public meeting," Pat Gleason, special counsel to Bondi's office and an expert in Sunshine Law, said in a statement. "Furthermore the Attorney General's review of the proposals was consistent with all applicable case law and attorney general opinions."

Open government experts and legal opinions by prior state attorneys general say that when a collegial body subject to the Sunshine Law such as the Cabinet delegates decision-making authority to a single member, that process itself must be done publicly.

Bondi said she reviewed law firm applications with her staff before deciding on a recommendation. Her staff said no violation occurred because Bondi recommended Nordby on her own.

"My office lawyers know this work. They know it well," she said in the Cabinet meeting. "They've reviewed with me the submissions we've received because this is what they do."

Barbara Petersen, executive director of the First Amendment Foundation, an open government watchdog group, said Tuesday's action underscores a weakness in Florida's Sunshine Law.

She said it's a mystery whether Bondi acted alone in recommending Nordby, which would be legal, or relied on her staff's input, which should have been done publicly.

"To a certain extent, we have to take their word for it, because we have no proof to the contrary," Petersen said.

Florida's Government in the Sunshine Manual, considered the bible on the subject, says: "If a board has delegated its decision making authority to a single individual ... the Sunshine Law may apply."

"We are concerned with the process by which this decision was made, especially because it is within the context of litigation regarding Sunshine Law transparency," said Andrea Flynn Mogensen, the Sarasota lawyer who represents the news outlets in the case of Weidner v. Scott.

Scott and the Cabinet members — Bondi, Chief Financial Officer Jeff Atwater and Agriculture Commissioner Adam Putnam — already have hired lawyers to represent them individually in the lawsuit. The costs to taxpayers for those contracts could total hundreds of thousands of dollars.

Bondi's office wouldn't identify the staff members who reviewed the lawyers' applications. Her office did not

respond to a public records request for any relevant documents.

Bondi's predecessors have repeatedly issued advisory opinions stating that the Sunshine Law may apply whenever one member of a collegial body is given decision-making authority.

In a 1990 case, Attorney General Bob Butterworth said the Sunshine Law applied in a case in which the Sunrise City Council delegated one of its members to negotiate some terms of a city garbage contract.

In that opinion, Butterworth wrote: "The delegation by a public body of its authority to act in the formulation, preparation, and promulgation of plans ... on which the entire body itself may foreseeably act, will subject the person or persons to whom such authority is delegated to the Sunshine Law."

St. Petersburg lawyer Matt Weidner and the state's major news organizations, including the Tampa Bay Times and Miami Herald, sued Scott and the Cabinet in February. The suit alleges they used aides as private and illegal "conduits" to carry out the firing of Commissioner Gerald Bailey of the Florida Department of Law Enforcement.

The Cabinet hired Shutts & Bowen at a discounted rate of $275 per hour. Bondi cited the cost, among the lowest of the five proposals, as well as Nordby's experience with other state agencies and the expertise of his law partner, Jason Gonzalez, who also has worked at the highest levels of state government.

Nordby and Gonzalez have longstanding ties to top Florida Republicans. In February, newly elected party Chairman Blaise Ingoglia named Nordby general counsel to the state GOP, and he held the same job from 2012-14 in the Republican-controlled state House.

Last year, Nordby, a University of Florida Levin College of Law graduate, represented the House in legal battles over proposed redistricting plans. He also was general counsel to Secretary of State Ken Detzner and handled dozens of election law and campaign finance cases.

Join The Conversation

Bradenton Herald is pleased to provide this opportunity to share information, experiences and observations about what's in the news. Some of the comments may be reprinted elsewhere in the site or in the newspaper. We encourage lively, open debate on the issues of the day, and ask that you refrain from profanity, hate speech, personal comments and remarks that are off point. Thank you for taking the time to

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October 2014: Judge Karen Cole ruled State Attorney Angela Corey's office violated Florida's Public Records Law by refusing to accept cash and debit cards for records requests, according to The Florida Times-Union.

July 2014: The Port St. Lucie City Council voted against paying for Councilman Ron Bowen's defense against allegations that he violated Florida's Sunshine Law. Bowen's attorneys negotiated a plea deal with the state attorney's office that substituted the criminal charge with a civil charge if Bowen accepted responsibility for breaking the law. Bowen paid a $300 fine and $50 in court fees. He accepted responsibility for miscommunication but said he never intentionally violated the law.

July 2014: A grand jury issued three more indictments in the Orlando-Orange County Expressway Authority investigation according to the Orlando Sentinel.

June 2014: The Florida Department of Business and Professional Regulation (DBPR) lost a public records suit against a collier county couple, according to the Tallahassee Democrat. Chief Circuit Judge Charles Francis ruled that DBPR did not provide records as required under Florida's Public Records Law. DBPR was ordered to pay $6720 to the couple for expenses they incurred.

January 2014: The city of Sarasota settled its lawsuit with Citizens for Sunshine, Inc. The city admitted violating Florida's Open Meetings Law and agreed to pay attorney's fees to the government watchdog group.

January 2014: The city of Lakeland has spent over $220,000 in legal fees during a grand jury's investigation regarding the Lakeland Police Department's public records policy, according to the Ledger (Lakeland).

January 2014: Orange County officials accused of violating Flroida's Public Records Law have agreed to enter settlement discussions in a pending civil lawsuit according to the Orlando Sentinel. . Each party will pay their own attorney's fees but the county will pay mediation fees. The settlement stipulates that the county will pay $90,000

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December 2013: The city of Venice settled a lawsuit claiming a violation of a previously settled lawsuit. After signing the agreement, the city held training sessions for council members on the Sunshine law but didn not admit that it violated the law. The city will pay $2607 in legal fees to Citizens for Sunshine's attorney

October 2013: State Attorney Jeff Ashton determined that Mayor Teresa Jacobs and four Orange county commissioners violated the Public Records Law when they deleted text messages about government decisions, according to the Orlando Sentinel. The state attorney did not file criminal charges, but imposed a $500 fine on the officials.

July 2013: The Martin County School Board unanimously approved a $20,000 settlement to the Sarasota-based nonprofit advocacy group Citizens for Sunshine, ending a lawsuit stemming from an alleged violation of the state's Public Records Law.

July 2013: The City of Sarasota entered into an agreement with Citizens for sunshine. In the agreement, Citizen's for Sunshine dismissed its lawsuit over the selection of a contractor for the $7.3-million State Street public garage project and the city agreed to provide Sunshine Law training to purchasing department staff, and pay Citizens for Sunshine's attorney's fees and costs. The group also agreed the violation had been cured.

March 2013: The Clay County Commission has agreed to settle a public records lawsuit fild by Joel Chandler. Although the county has not admitted any wrongdoing, the County Manager siad they are conducting enhanced training on Florida's public records policies for all county employees.

February 2013: The Polk County School Board settled a public records lawsuit with Lakeland resident Joel Chandler. In the settlement, Chandler agreed to drop the lawsuit as well as several public records requests in exchange for the production of email correspondence. The Board must also pay Chandler's legal fees and reimburse Chandler $668 for a records serach that yielded 21 emails. In addition the Board will be providing new training for workers involved in public records requests.

January 2013: The city of Sarasota settled a lawsuit filed against them by activists alleging violation of the Sunshine Law. They agreed to pay $7000 in legal fees and $3000 to hire an outside attorney to represent one ofhte comittee members individually named in the suit. The city plans to hold refresher sessions on the state's Government-in-the-Sunshine Law and email usage for commissioners and advisory board members.

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SEPTEMBER 2012: Jacksonville Mayor Alvin Brown's office will pay *The Florida Times-Union* $15,000 to settle a lawsuit over access to public records. *The Times-Union* attorney George Gable said the newspaper incurred $16,300 in fees and expenses to gain access to the records.

SEPTEMBER 2012: A judge ruled that the city of Valparaiso violated Florida's Sunshine Law on two separate occations when it conducted a private meeting and failed to provide public notice.

AUGUST 2012: Judge Chris Patterson, of the 14th Judicial Circuit ruled that the city of Vernon had violated the Sunshine Law. *The Washington County News,* a sister paper of *The News Herald* (Panama City) argued that an executive session to update council members of pending litigation was a violation of the Sunshine Law and that the tape of the meeting should become public record.

JUNE 2012: Booker Young Jr., 81, was found guilty of violating the state's Sunshine Law for actions related to a March 16, 2011 Lake Wales Housing Authority Board meeting. He was find $67 for the civil violation and ordered to pay $500 to the State Attorney's Office for investigation adn prosecution costs.

MAY 2012: An investigation which began September 2011, ended with each of five Crestview City Council officials being fined $500 for violating Florida's Sunshine Law. Emails released as part of the investigation indicated that council members had discussed matters through email that were required to be discussed at public meetings.

MARCH 2012: Circuit Judge James H. Daniel ruled that a Duval County activist was entitled to $1245.00 for expenses he incurred in his lawsuit against the Jacksonville Police and Fire Pension Fund, but said that the fund did not act willfully in breaking the Public Records Law so it would not be liable for his attorney's fees.

MARCH 2012: The Inverness County Board of County Commissioners settled a public records lawsuit out of court for $1450.00.

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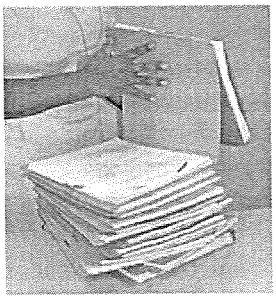
November 2011: The Southeast Volusia County Hospital District recently approved a $1 million settlement fee to be paid to the Bert Fish Foundation by the hospital's insurance policy. This is a result of the lawsuit filed by the Bert Fish Foundation to stop a merger between public Bert Fish and private nonprofit Adventist Health. The merger was the result of 21 meetings that had been illegaly closed to the public.

September 2011: A Duval County activist has prevailed in his public records lawsuit against the Jacksonville Police and Fire Pension Fund. The Fund asked Curtis Lee, Director of the Concerned Taxpayers of Duval cCounty to pay a $280 so an employee could supervise Lee's inspection of the records for eight hours. Daniel also found the fund should not have asked for $27.66 per hour for an employee to make copies of the records before copies were even requested. In addition to its own $160,000 in legal fees the fund might also be responsible for part of Lee's attorneys' fees.

AUGUST2011: A member of the Florida Keys Mosquito Control District pleaded guilty to a non-criminal violation of the Open Meetings Law. Joan Lord-Papy, a five-term commissioner, will pay $250 fine along with $270 in court costs. Lord-Papy was charged after responding to an email from a fellow commissioner discussing interview dates for district director applicants. The original email, sent by Commissioner Jack Bridges, included a warning that other commissioners should not reply to avoid violating the Open Meetings Law.



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2022

State of Florida

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XI. ONLINE TRAINING 25

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. Employees Holding Office

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

7. 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.]

8. *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.]

9. *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.]

10. *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. 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.

4. 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 - <u>Limited Financial Disclosure</u>*

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:

Incumbent officials must file FORM 6 annually by July 1 with the Commission on Ethics. CANDIDATES must file 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.]

Beginning January 1, 2022, 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.

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 the value, 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, 2022, 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. Form 6 filers will receive an emailed invitation to register for EFDMS in March 2022. Filers requiring earlier access should contact the Commission to request an invitation. 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, 2022. 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 obtain a complaint form (FORM 50), by contacting the Commission office at the address or phone number shown on the inside front cover of this booklet, or you can download it from the Commission's website:
www.ethics.state.fl.us.

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.

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. A comprehensive online training course addressing Florida's Code of Ethics, as well as Sunshine Law, and Public Records Act is available via a link on the Commission's homepage.

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
MAILING ADDRESS	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ❑ CITY ❑ COUNTY ❑ OTHER LOCAL AGENCY
CITY COUNTY	NAME OF POLITICAL SUBDIVISION:
DATE ON WHICH VOTE OCCURRED	MY POSITION IS: ❑ ELECTIVE ❑ APPOINTIVE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office MUST ABSTAIN from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also MUST ABSTAIN from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a “relative” includes only the officer’s father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A “business associate” means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * * * * * * * * * * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * * * * * * * * * * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I,_____, hereby disclose that on_____, 20 ____ :

(a) A measure came or will come before my agency which (check one or more)

___ inured to my special private gain or loss;

___ inured to the special gain or loss of my business associate, _____;

___ inured to the special gain or loss of my relative,_____ ;

___ inured to the special gain or loss of _____, by whom I am retained; or

___ inured to the special gain or loss of _____ , which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

_____ Date Filed

_____ Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED $10,000.

HERNANDO COUNTY WATERWAYS ADVISORY COMMITTEE
MEETING MINUTES – DECEMBER 15, 2021

Date: Wednesday, December 15, 2021 Time: 7:00 P.M.

Location: Hernando Beach Marine Group Inc. Training Center
4340 Calienta Street, Hernando Beach, FL 34607

Advertised: Friday, December 3, 2021, The Hernando Sun (CLK21-229)

The meeting agenda and back-up material are available online at:
https://www.hernandocounty.us/departments/departments-n-z/public-works/aquatic-services/waterways-advisory-committee/agendas-and-minutes

CALL TO ORDER

Chairman Chuck Morton called the meeting to order at 7:04 p.m.

Attendee Name	Title	Attendance
Chuck Morton	Chairman	Present
Kathryn Birren	Vice Chairman	Present
Michael Senker	Member	Present
Mike Fulford	Member	Present
Sarah Hill	Member	Absent
Wayne Dukes	Commissioner / Liaison	Absent
Scott Herring	Department of Public Works Director / County Engineer	Present
Keith Kolasa	Aquatic / Waterways Services Manager	Present
Steve Kelly	Corporal / Marine Patrol Officer	Absent
Tina Duenninger	Co. Administration / DPW Executive Office Manager	Present

PLEDGE OF ALLEGIANCE

Chairman Chuck Morton requested New Business Item 1. Red Tide Overview, be presented by Ms. Brittany Hall-Scharf at this time so that she may leave the meeting as soon as possible.

NEW BUSINESS

1. **Red Tide Overview – Brittany Hall-Scharf, IFAS/Florida Sea Grant**
   Ms. Brittany Hall-Scharf provided a brief overview on red tide bloom and monitoring utilizing a PowerPoint presentation. The presentation covered red tide algae, samples collected, monitoring, and descriptions of concentrations.

   Ms. Hall-Scharf reviewed certain seafoods not consumable during red tide blooms due to poisonous toxins and provided information for citizens to get involved. A brief Q&A followed.

   Ms. Hall-Scharf left the meeting at this time.

APPROVAL OF MINUTES – OCTOBER 20, 2021

MOTION: Mr. Mike Fulford motioned to approve the minutes of the October 20, 2021 Waterways Advisory Committee meeting. Vice Chairman Kathryn Birren seconded. The motion carried and was approved unanimously.

APPROVAL / MODIFICATION OF AGENDA (Limited to Staff and Committee Only)

New Business Item 1. Red Tide Overview, was moved up on the agenda following the Pledge of the Allegiance. Mr. Mike Fulford requested a brief status on the Weeki Wachee River Dredge project be added to the agenda under New Business. There were no other changes made to the agenda.

MARINE PATROL REPORT

Corporal Steve Kelly was not present at the meeting.

NEW BUSINESS

2. **Proposed Ordinance on Mooring of Commercial Vessels at Boat Ramps**
   Mr. Keith Kolasa noted the Proposed Ordinance on Mooring of Commercial Vessels at Boat Ramps was included in the agenda packet for the Committee's review and feedback before the item moved forward. He noted more recently, a shrimping boat had been docked at the boat ramp doing repairs for an extensive period of time. The County had determined this to be constant occurrences in the past few years and deemed it necessary to revise the existing Ordinance to add language and enforce associated fines. A copy of Mr. Kolasa's comments on the proposed Ordinance were highlighted and provided in the agenda packet for review.

   Vice Chairman Kathryn Birren requested the Ordinance should include all vessels, not just commercial vessels, and that the same rules and fines should apply to both commercial and recreational vessels. Mr. Scott Herring advised the Ordinance was being proposed to include sponging vessels and not commercial vessels actively fishing. He further advised the non-commercial vessels were already prohibited. Mr. Mike Fulford clarified the purpose of the Ordinance was to allow for enforcement by the Sherriff's Office and impose fines. He expressed he was comfortable with the wording in the Ordinance packet.

   Mr. Scott Herring clarified certain sections of the Ordinance for Vice Chairman Kathryn Birren. Vice Chairman Birren requested wording to include "actively launching and recovering" vessel. Mr. Mike Fulford requested a glossary within the Ordinance defining vessel to include dockage to be assembled with the addition of motor to transport.

   In conclusion, the following recommendations were made by staff and committee members:

   - Add language to include "commercial sponging ***and shrimping*** vessels ***docking or*** blocking boat ramps in Hernando County for extended period of time when not actively engaged in commercial fishing; and"

   - Add language to include "within 150 feet ***or less*** of any public …"

   - Add language to include "commercial sponging vessels, ***including shrimping vessels***, are commercial fishing vessels …"

   - Treat ALL vessels the same (same rules and fines should apply to both commercial and recreational vessels).

- Allow time for boat owner to get their vehicle and pull boat out of the water.

- Wording to include prohibition against anchoring or mooring within 150 feet or less of a boat ramp does not apply *"while actively launching and recovering"* vessel.

- Concerns regarding assembling docks and tying up boat ramp, i.e., docks being put together at the ramp. Wording to include docks in the vessel description or as a separate commercial activity use of the ramp; or

- Include glossary within Ordinance defining vessel to include "dockage to be assembled with the addition of motor to transport".

Mr. Scott Herring advised he would forward all recommendations to Legal.

MOTION: Mr. Mike Fulford motioned to accept with the performance conditions stated. Mr. Mike Senker seconded. The motion carried and was approved unanimously.

3. **Member Replacement for Chuck Morton**
   Chairman Chuck Morton welcomed newly appointed committee member Mr. Chris Licata, who was present at the meeting as a citizen.

4. **2022 Meeting Schedule**
   The new dates proposed to the 2022 meeting schedule of the Waterways Advisory Committee were reviewed.

   MOTION: Mr. Mike Fulford motioned to approve the new dates to the 2022 meeting schedule of the Waterways Advisory Committee. Vice Chairman Kathryn Birren seconded. The motion carried and was approved unanimously.

5. **Weeki Wachee River Dredge Project**
   Mr. Keith Kolasa advised bids had been received for the Weeki Wachee River Dredge project, and the Southwest Florida Water Management District was in the process of selecting a contractor. The project consisted of a two-mile section on the river from Rogers Park to Richardson Drive and was anticipated to begin prior to the State Road Canal Dredge project.

OLD BUSINESS

1. **Aquatic Preserve Boundary – Pine Island**
   Mr. Keith Kolasa shared the Aquatic Preserve Boundary map for Pine Island, which was included in the agenda packet. Upon query by Mr. Chuck Greenwell, Mr. Scott Herring responded previously approved RESTORE projects were exempt from changes to the Aquatic Preserve, and Pine Island would be moving forward slowly and handled by the new project manager when onboard.

2. **State Road Canal Dredge**
   Mr. Keith Kolasa noted a pre-bid meeting on the State Road Canal Dredge project was held a few weeks ago. Bids are due in early January and the project is anticipated to begin after April 1 once Manatee season is done.

3. **Lake Townsen Boat Ramp**
   Mr. Keith Kolasa advised the contractor was working on acquiring feedback on permitting from the Florida Department of Environmental Protection for the Lake Towsen Boat Ramp project.

He further advised the County will be requesting more grant funding from the State for construction and that design was nearly complete.

INFORMATIONAL ITEMS

1. **Revisions to Marine Construction Code Ordinance – Marginal Docks**
   Mr. Aaron Pool, Zoning and Code Enforcement Administrator, introduced himself and clarified the marginal docks in the riverine, indicating there would not be a 500 ft. maximum for marginal docks in areas that are not covered in the riverine protection Ordinance.

2. **Hernando Beach Christmas Boat Parade**
   Mr. Keith Kolasa displayed pictures taken at the Hernando Beach Christmas Boat Parade held on December 11, 2021. He stated it was an honor having the U.S. Marines and active service work on the toy collection boat and having the residents donate Toys for Tots. Committee members expressed Mr. Kolasa did a great job playing Santa.

3. **Volunteer Reef Ball Build Event**
   Mr. Keith Kolasa announced 18 cubes and four reef balls were built at the Volunteer Reef Ball Build event held on December 4, 2021. A couple yards of cement was donated for the event.

Prior to Citizens' Comments, Mr. Scott Herring thanked Chairman Chuck Morton for his service and all that the Chairman, along with the Port Authority, and now the Waterways Advisory Committee, had done throughout the years. He advised the Board of County Commissioners had prepared a letter and certificate of appreciation but had not been able to get it signed in time for the meeting. Mr. Mike Fulford also thanked Chairman Morton for his service, who was presented with a gift basket by Vice Chairman Kathryn Birren from the members and the community. Chairman Morton thanked everyone and encouraged all to participate.

CITIZENS' COMMENTS

Mr. Sarge Dendy queried what were Code Enforcement's goals relative to enforcement of tagging for derelict docks and boats along the canals. Mr. Aaron Pool responded he has been with the County for seven months and has not been able to see the code enforcement cycle for a full year. He advised there has been a lot of enforcement on the waterways relative to the riverine protection Ordinance. He further advised there were only five code enforcement officers and requested he be notified of any dangerous docks and boats.

Mr. Steve Barton requested the Waterways Advisory Committee place an agenda item on the February 16 meeting to discuss the oil pollution problem in the main channel and come up with solutions.

Mr. Chuck Greenwell stated that it was not clearly defined the differences between water dependent land uses, which involve code enforcement, and water dependent uses that really don't relate to zoning. He further stated there was substantial amount of work involved in regulating docks and water uses in Hernando Beach that Planning & Zoning was not in tune with or equipped to handle as well as the Waterways Advisory Committee and expressed that since the Board of County Commissioners was now the acting Port Authority, may want to get clarified with Planning & Zoning.

There were no other citizens' comments.

WATERWAYS ADVISORY COMMITTEE / STAFF COMMENTS

1. Chuck Morton, Chairman
2. Kathryn Birren, Vice Chairman
3. Mike Senker, Member
4. Mike Fulford, Member

5. Sarah Hill, Member
6. Keith Kolasa, Aquatic/Waterways Services Manager
7. Scott Herring, Department of Public Works Director/County Engineer

ADJOURNMENT

The meeting was adjourned at 8:43 p.m.

Upcoming Meeting(s):

The next regular meeting of the Waterways Advisory Committee will be held on Wednesday, February 16, 2022, at 7:00 P.M., in the Hernando Beach Marine Group Inc. Training Center, 4340 Calienta Street, Hernando Beach, FL 34607.


01.07.2022 11:46

Florida Fish and Wildlife Conservation Commission

SPRINGS PROTECTION ZONES

NEW LEGISLATION

SB 1086 Signed into Law June 29, 2021

Section 327.45, Fla. Stat. directs the Commission to establish springs protection zones that prohibit anchoring, mooring, beaching, or grounding of vessels or restrict the speed and operation of vessels to prevent harm to certain springs, spring groups, and their associated spring runs. The Commission is adopting rules to implement this provision.

THE PROCESS

Similar to Established Process Already in Use

This rule creates a process similar to the local government boating restricted area application process. Applications for spring protection zones from governmental entities will be approved only when competent substantial evidence submitted by the applicant demonstrates that the spring, spring group, or spring run is suffering negative impacts as a result of vessel speed or operation, or the anchoring, mooring, beaching, or grounding of vessels.

PROTECTION ZONES

New Rule Does Not Establish any Zones

This draft proposed rule does not establish springs protections zones, rather, it establishes a process by which state, county, and municipal governments and water management districts may apply for a springs protection zone.

WHO APPLIES?

State, County and Municipal Governments and Water Management Districts

Applications for spring protection zones from governmental entities will be approved only when competent substantial evidence submitted by the applicant demonstrates that the spring, spring group, or spring run is suffering negative impacts as a result of vessel speed or operation, or the anchoring, mooring, beaching, or grounding of vessels.

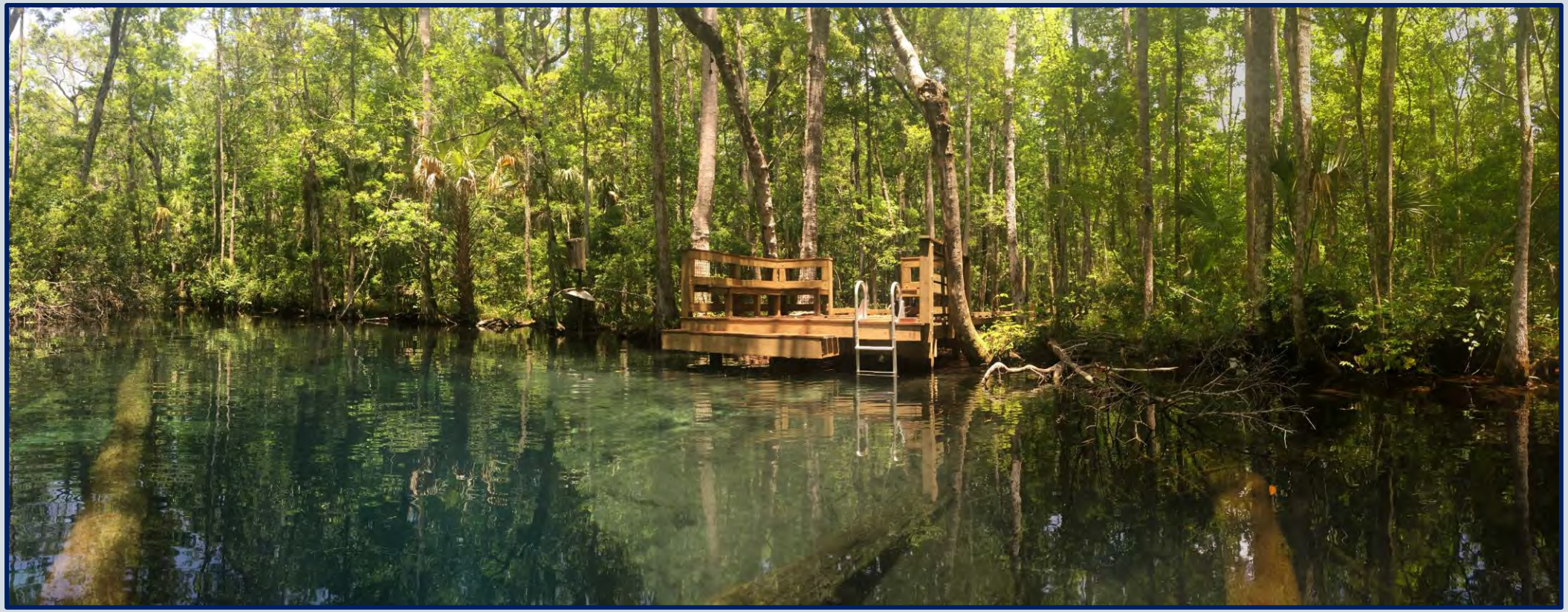
MULTI-AGENCY REVIEW

Substantial Competent Evidence

Similar to the process used for boating restricted areas, municipalities will be required to present competent substantial evidence within their application, which will be reviewed by the FWC, DEP and the relevant water management district for sufficiency. Each springs protection zone will be adopted separately by rule following review of an application showing that the zone is necessary to prevent harm by vessels to the spring, spring group, or spring run. This rule does not create any springs protection zones.

For comments, questions and additional information, please contact the FWC Boating and Waterways Section at XXX-XXX-XXXX or XXXXXXXXXXX@MyFWC.com

Springs Protection Zones

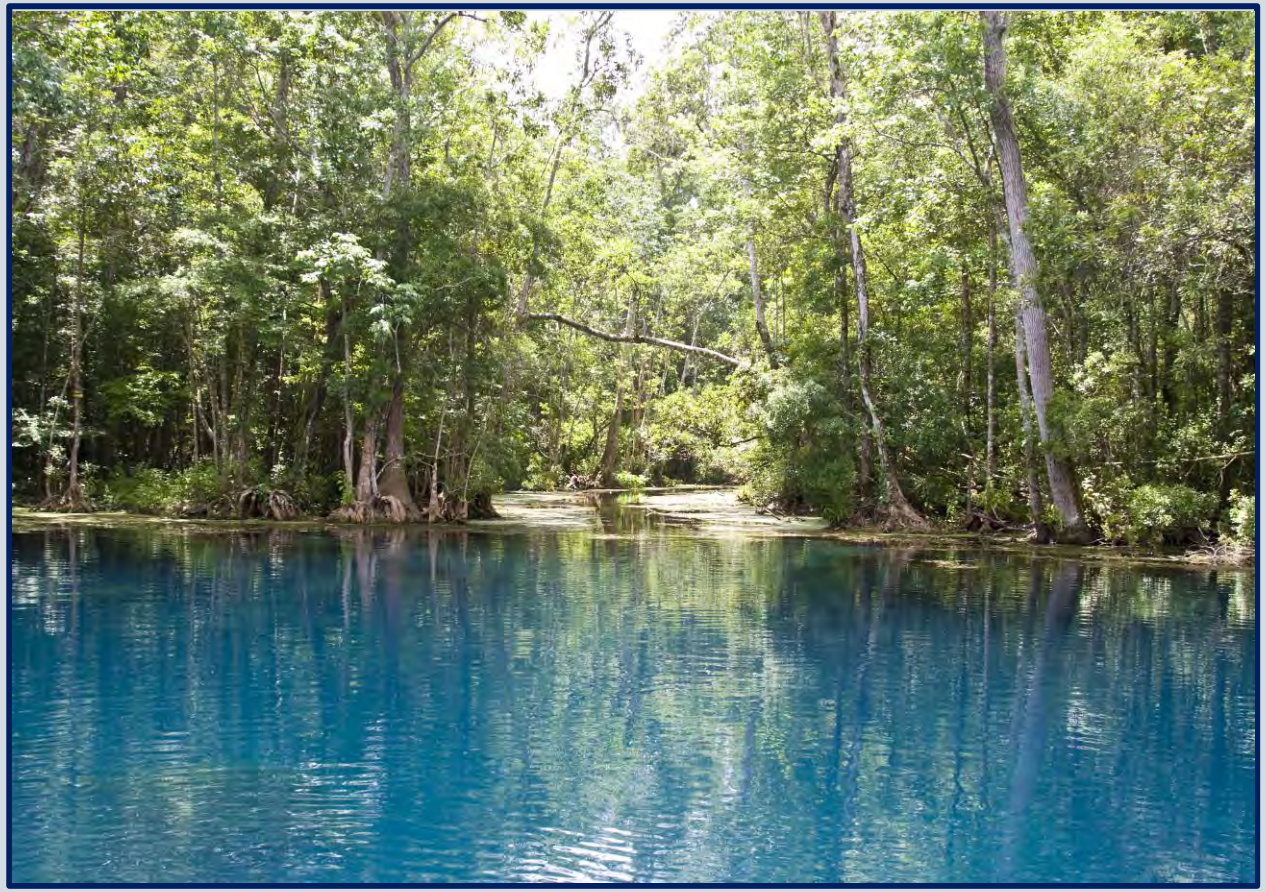


August/September 2021 Workshops

Section 327.45, Florida Statute

Establish Springs Protection Zones

- First, second and third magnitude springs and spring groups and their associated spring runs
- Restrict speed/operation
- Prohibit any or all:
  - Anchoring
  - Mooring
  - Beaching
  - Grounding



Application Process

- Similar to boating restricted area application process in place for local governments
- State, county, and municipal governments and water management districts may apply
- Competent, substantial evidence of harm and that harm is caused by vessels

Review and Approval

- Reviewed by FWC, DEP and relevant Water Management District
- If evidence demonstrates a springs protection zone is necessary, it will be adopted in rule by the Commission
- Upon approval, FWC marks springs protection zones with uniform waterway markers

Rule Language

- FWC working in collaboration with DEP
- Zones no larger than necessary to regulate those specific areas
- If necessary for navigability, a portion of the springs protection zone may be slow speed minimum wake.
- Competent substantial evidence demonstrates:
  - Identifiable harm
  - The harm is a result of vessel activity
- Competent substantial evidence may include:
  - Carrying capacity studies
  - Vessel traffic studies
  - Water quality studies
  - Any facts or data that are of a type reasonably relied upon by scientists, environmental professionals, or engineers

Public Comment

BACKGROUND REPORT
FINAL RULE
Springs Protection Zones – 68D-24.0035
October 7, 2021

68D-24.0035 Springs Protection Zones.

(1) State, county, and municipal governments of the State of Florida and Florida water management districts may apply for a springs protection zone for a first, second, or third magnitude spring or spring group, including associated spring runs, within their jurisdiction in accordance with section 327.45, Florida Statutes.

(2) Applicants shall submit applications on the Commission's Application for Florida Springs Protection Zone form, form FWCDLE _248AR (October 2021), which is hereby incorporated by reference. The Application is available at https://www.flrules.org/Gateway/reference.asp?No=Ref-xxxxx.

(3) Applications shall be submitted by mail or in person to Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, Boating and Waterways Section, 620 South Meridian Street, Tallahassee, Florida 32399-1600, or by electronic mail to xxxxxxxx@myfwc.com.

(a) The Boating and Waterways Section shall not process partial or incomplete applications.

(b) Once an application is received, the Boating and Waterways Section shall determine if the Application is complete.

1. If the application is not substantially complete or has not been completed substantially correctly, the Boating and Waterways Section shall return it to the applicant with a statement of the items that are missing or that must be corrected.
2. If the application is substantially complete and only minor additions or corrections are required, the Boating and Waterways Section shall notify the applicant of the apparent errors or omissions and request the required additional or corrected information. If the requested additional or corrected information is not received within 60 days, the Boating and Waterways Section may deny the application without prejudice.
3. Within 10 days following receipt of a completed application, the Boating and Waterways Section shall provide notice of such receipt to the applicant by mail or by electronic mail.
4. The Boating and Waterways Section shall, within 120 days following receipt of a completed application, notify the applicant of its intent to recommend the approval of the application to the Commission or notify the applicant of its denial of the application.
    a. The section leader of the Boating and Waterways Section is delegated authority to deny such applications, and such denial shall constitute final agency action. Any substantially affected person may request review of a denial; the request must be received by the Commission within 21 days of receipt of the denial.
    b. The Florida Fish and Wildlife Conservation Commission, sitting as agency head at its next available regularly scheduled meeting, shall review any recommendation made by the Boating and Waterways Section for approval of a springs protection zone. If the Commission approves a springs protection zone, it shall be adopted in rule.

(4) Applications for spring protection zones shall be approved only when competent substantial evidence submitted by the applicant demonstrates that the spring, spring group, or spring run is suffering harm of the type identified in subsection 327.45(2), Florida Statutes, as a result of vessel speed or operation, or the anchoring, mooring, beaching, or grounding of vessels.

(a) Springs protection zones shall be no larger than necessary to regulate those specific areas where negative impacts to the spring, spring group, or spring run on an application can be shown to occur from the vessel activity sought to be regulated. Applications seeking to regulate areas larger than are supported by competent substantial evidence to show the spring, spring group, or spring run is being harmed by the vessel activity for which regulation is being sought will be denied.

(b) To ensure that a springs protection zone created pursuant to this rule does not completely cut off all navigability into, through, or out of a waterway, a

portion of the springs protection zone may be created as slow speed minimum wake, as defined in Rule 68D-23.103, F.A.C.

(5) (a) Competent substantial evidence may include carrying capacity studies, vessel traffic studies, or water quality studies, for example, but may also include any facts or data that are of a type reasonably relied upon by scientists, environmental professionals, or engineers.

(b) Competent substantial evidence necessary to establish a springs protection zone may include any combination of evidence that demonstrates:

1. Harm of the type identified in subsection 327.45(2), Florida Statutes, is occurring to all portions of the spring, spring group, or spring run for which regulation is being sought;

2. The harm occurring to the portion of the spring, spring group, or spring run for which regulation is being sought is a result of vessel speed; vessel operation; or anchoring, mooring, beaching or grounding of vessels; and

3. Establishment of the springs protection zone requested will regulate only that type of vessel activity that is causing harm to the spring, spring group, or spring run.

(6) Complete applications will be evaluated by the Commission, the Florida Department of Environmental Protection, and the relevant water management district to determine whether competent substantial evidence has been submitted sufficient to show harm is occurring to the identified spring, spring group, or spring run; whether competent substantial evidence has been submitted sufficient to show such harm is a result of the vessel activity sought to be regulated; and whether sufficient competent substantial evidence has been submitted to show that all portions of the spring, spring group, or spring run for which regulation is being sought are experiencing the harm caused by the vessel activity.

(7) Following the Commission's adoption of a springs protection zone by rule, the zone will be enforceable once the Commission posts uniform waterway markers notifying the public of the regulations applicable in the zone.

Notice of Change/Withdrawal

FISH AND WILDLIFE CONSERVATION COMMISSION
Vessel Registration and Boating Safety
RULE NO.: RULE TITLE:
68D-24.0035 Protection Zones for Springs

NOTICE OF CORRECTION

Notice is hereby given that the following correction has been made to the proposed rule in Vol. 47 No. 242, December 16, 2021 issue of the Florida Administrative Register. The Summary of Statement of Estimated Regulatory Costs was incomplete. The Summary is amended to read as follows:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The nature of the rule and the preliminary analysis conducted to determine whether a SERC was required.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

Additionally, paragraph (3) of the rule language was missing a period at the end of the sentence. The language is amended to add that non-substantive change, as provided below:

THE FULL TEXT OF THE PROPOSED RULE IS:

68D-24.0035 Protection Zones for Springs.

(1) The Commission will establish a springs protection zone restricting speed and operation or prohibiting anchoring, mooring, beaching, or grounding of vessels within a first, second, or third magnitude spring or spring group, and associated spring runs when evidence demonstrates that a zone will protect or prevent the spring, spring group, or spring run from harm of the type identified in section 327.45, Florida Statutes.

(2) Evidence of the need for spring protection or to prevent harm may include vessel carrying capacity studies, vessel traffic studies, vegetation or water quality studies, or any facts or data that are of a type reasonably relied upon by scientists, environmental professionals, boating professionals or engineers.

(3) Any person may provide evidence to the Commission for use in the evaluation of a spring, spring group, or spring run under subsection (1).

(4) Springs protection zones shall be no larger than necessary to protect or prevent specified harms to springs, spring runs, and spring groups.

(5) Following the Commission's adoption of a springs protection zone by rule, the zone will be enforceable once the Commission posts uniform waterway markers notifying the public of the regulations applicable in the zone.

Rulemaking Authority 327.04, 327.45 FS. Law Implemented 327.45 FS. History–New _____.

Application for Florida Springs Protection Zone

1. APPLICANT INFORMATION			
Applicant:			
Project Manager Name:		Project Manager Title:	
Mailing Address:		City:	Zip Code:
Telephone:	Fax:	Email:	

2. Spring, Spring group, or spring run for which regulation is sought:

_____
_____
_____
_____
_____
_____

3. Type of Springs Protection Zone Requested (select all that apply):

☐Speed Restriction
☐Operation Restriction
☐Anchoring Prohibition
☐Mooring Prohibition
☐Beaching Prohibition
☐Grounding Prohibition

4. If requesting a vessel speed or operation restriction, please explain exactly what restriction(s) you are requesting. If additional space is needed, you may attach additional sheets.

_____
_____
_____
_____
_____
_____
_____
_____
_____

5. Attach maps sufficient to show the Applicant's legal jurisdictional boundaries.

6. Attach maps, a sketch or a survey, and legal description sufficient to show the specific boundaries of the Springs Protection Zone(s) sought under this Application. If multiple types of Springs Protection Zones are identified in 3, above, identify the boundaries of each type of regulatory zone being sought.

7. Summarize the specific harm occurring to the spring, spring group, or spring run from the above-noted vessel activity (this harm should be supported by the documentation required by rule 68D-25.002, F.A.C. and attached, and may include negative impacts to water quality, water quantity, hydrology, wetlands, and aquatic and wetland-dependent species). If additional space is needed, you may attach additional sheets.

8. List all competent substantial evidence being submitted with this Application that demonstrates:

1. the specific harm to the spring, spring group, or spring run identified above;
2. the specific harm to spring, spring group, or spring run identified above is a result of the type of vessel activity sought to be regulated; and
3. the specific harm to the spring, spring group, or spring run identified above, and which is caused by vessel activity identified herein, is occurring within all areas of the spring, spring group, or spring run for which regulation is sought.

Identify and describe how each item of evidence demonstrates each of these elements. If additional space is needed, you may attach additional sheets.

(Attach all evidence listed below to this Application or submit it together with this Application)

APPLICANT SIGNATURE

Application is hereby made for a Springs Protection Zone as provided herein. I certify that I am familiar with the information contained in the application, and to the best of my knowledge and belief, this information is true, complete, and accurate. I further certify that I possess the authority to sign on behalf of the Applicant.

The applicant's governing body is aware of and has authorized me as the official representative of the applicant to act in connection with this application, as well as to provide additional information as may be required.

Print/Type Name of Project Manager Title

Signature of Project Manager Date

STATE OF FLORIDA, COUNTY OF (_____)

_____ personally appeared before me this _____ day of _____, 20_____ who subscribed and swore to the above instrument in my presence.

Notary Public Name: _____My commission expires:

HERNANDO COUNTY WATERWAYS ADVISORY COMMITTEE
2022 MEETING SCHEDULE

Meetings are held the third (3rd) Wednesday of the specified month at 7:00 P.M.

Location: Hernando Beach Marine Group Inc. Training Center
4340 Calienta Street, Hernando Beach, FL 34607

Approved Dates

February 16, 2022

April 20, 2022

June 15, 2022

August 17, 2022

October 19, 2022

December 21, 2022