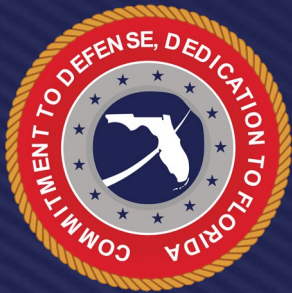




# FLORIDA COMMERCE



## FLORIDA DEFENSE SUPPORT COMMISSION

Ethics, Sunshine, and Public Records

Karen Gates, General Counsel

Ryan Bourgoin, Deputy General Counsel

Office of General Counsel

# Ethics: Basis of Standards

## Sources:

- Florida Constitution – Article II, Section 8
- Chapter 112, Part III, Florida Statutes

# Ethics: Financial Disclosures

- Each Board Member must file a financial disclosure in accordance with section 8 Article II of the State Constitution, section 112.3144, Florida Statutes, or section 112.3145, Florida Statutes, as applicable.
- Board Members must file Financial Disclosure Form 1 (Statement of Financial Interests) if not already required to file Form 6 (Full Disclosure).
- Filing a Financial Disclosure makes Board Members “Reporting Individuals” and also subject to:
  - Gift ban (section 112.3148, Florida Statutes);
  - Lobbying expenditure ban (section 112.3215(6)(a), Florida Statutes);
  - Prohibition on gifts from political committees (section 112.31485, Florida Statutes); and
  - Honorarium restrictions (section 112.3149, Florida Statutes)



# Ethics: General Guidelines

## General Guidelines:

- Public officers and employees are prohibited from soliciting or accepting anything of value, including a gift, loan, reward, promise of future employment, favor, or service, that is intended to influence the public officer's or employee's actions.
- Public officers\* and employees cannot directly or indirectly purchase, rent, or lease any realty, goods, or services for the Task Force from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest.
- Public officers and employees may not corruptly use or attempt to use their official positions to obtain a special privilege for themselves or others.
- Public officers\* and employees cannot have or hold any employment or have a contractual relationship with any business entity that does business with the Task force.
- Public officials and employees may not disclose or use information not available to the public and obtained by reason of their public positions for personal benefit or the benefit of others.



# Gifts

## What is a Gift?

- Section 112.312, Florida Statutes, defines “Gift” as:
  - Something that “is accepted by a donee or by another on the donee’s behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee’s benefit or by any other means, for which equal or greater consideration is not given within 90 days.”
- A gift is anything accepted by a person, or on that person’s behalf, whether directly or indirectly, for that person’s benefit and for which no payment is made.
- Examples:
  - Flowers/plants
  - Food/beverages
  - Dues, fees, tickets to events, lodging, or parking
  - Personal services for which a fee is normally charged
  - Payment, loan advance, or forgiveness of a debt
  - Property or the use of property, whether real, tangible, or intangible
  - Preferential rates or terms of a transaction not available to others similarly situated



# Travel and Expenses

- Reimbursement must be made according to section 112.061, Florida Statutes.
- Lodging expenses may not exceed \$175/day, excluding taxes, unless participating in a group rate or at least three rates were acquired.
- Staffing and administrative expenses of the Task Force may not exceed \$250,000, including travel and per diem costs incurred by Task Force members not otherwise eligible for state reimbursement



# Public Records

- Article I, § 24, Florida Constitution
  - “Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf.”
- Florida’s Public Records Act, Chapter 119
  - “It is the policy of this state that all state, county, and municipal **records are open for personal inspection and copying by any person.** Providing access to public records is a duty of each agency.”





# What are Public Records? The Content

Section 119.011(12), Florida Statutes, defines "public records" to include:

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

**Note:** All such materials, regardless of whether they are in final form, are open for public inspection unless the Legislature has exempted them from disclosure.





# What are Public Records?

## The Form

- Any form: “[A]ll documents, papers, letters, maps, books, tapes, photos, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission” § 119.011, Fla. Stat.
- Includes emails, text messages, social-media posts, cocktail napkins, etc.
- On any device: Work or personal computer; work or personal phone, etc.
- In any location: In your work office; in the filing cabinet in your home garage, etc.



# Providing Public Records

- Section 119.07(1)(a), Florida Statutes, provides that “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of public records or the custodian’s designee.”
- The Public Records Act does not contain a specific time limit (such as 24 hours or 10 days) for compliance with public records requests.
  - The Florida Supreme Court has stated that the only delay in producing records permitted under Chapter 119, Florida Statutes, is the reasonable time allowed for the custodian to retrieve the record and redact those portions of the record the custodian asserts are exempt.





# Exemptions – What can be Withheld?

- A custodian of a public record who contends that a record or part of a record is exempt from inspection must state the basis for the exemption, including the statutory citation to the exemption.
- Additionally, upon request, the custodian must state in writing and with particularity the reasons for the conclusion that the record is exempt from inspection.





# Exempt vs. Confidential

## Confidential:

- An agency is prohibited from releasing confidential information—often by threat of civil or criminal liability— unless by court order, consent, or statutorily- specified process.

## Exempt:

- An agency is not required to release exempt information to the public but is not prohibited from doing so.



# Exemptions Specific to FDSTF

- Section 288.985, Florida Statutes, provides that the following records are exempt from disclosure:
  1. That portion of a record which relates to strengths and weaknesses of military installations or military missions in this state relative to the selection criteria for the realignment and closure of military bases and missions under any United States Department of Defense base realignment and closure process.
  2. That portion of a record which relates to strengths and weaknesses of military installations or military missions in other states or territories and the vulnerability of such installations or missions to base realignment or closure under the United States Department of Defense base realignment and closure process, and any agreements or proposals to relocate or realign military units and missions from other states or territories.
  3. That portion of a record which relates to the state's strategy to retain its military bases during any United States Department of Defense base realignment and closure process and any agreements or proposals to relocate or realign military units and missions



# Rights of the Requestor

- Requestors can remain anonymous (but this does not prohibit an agency from asking for information to help facilitate fulfillment of the request).
- Requestors are not required to give a “legitimate” reason as a condition of access or explain their purpose.
- Requests do not have to be in writing.
- Requestor can inspect (and photograph) records, receive copies of records, or both.



# Under Chapter 119, Florida Statutes, FDSTF Is NOT Required To:

- Create records that do not exist (e.g., lists of information in records).
- Respond to information requests (e.g., answer questions about information in records).
- Perform research for a requestor.



# Penalties

- A person who has been denied the right to inspect and/or copy public records under the Public Records Act may bring a civil action against the agency to enforce the terms of Chapter 119, Florida Statutes.
- In addition to judicial remedies, section 119.10(1)(b), Florida Statutes, provides that a public officer who knowingly violates the provisions of section 119.07(1), Florida Statutes, is subject to suspension and removal or impeachment and is guilty of a misdemeanor of the first degree, punishable by possible criminal penalties of one year in prison, or \$1,000 fine, or both.





# Record Retention

- Section 119.021(2)(a), Florida Statutes, requires the Division of Library and Information Services of the Department of State to adopt rules establishing retention schedules and a disposal process for public records.
  - Each agency must comply with these rules.
- The approved records retention schedule for state and local governmental entities is located online at <https://files.floridados.gov/media/703328/g1-sl-2020.pdf>
- A public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the Division of Library and Information Services.





# Florida Government in the Sunshine Law

## Law:

- Florida's Sunshine Law is found in Article I, Section 24 of the Florida Constitution, and Chapter 286, Florida Statutes.

## Applicability:

- The law applies to ANY meeting of 2 or more members, or members elect, of a board or commission who meet to discuss a matter which will foreseeably come before the board or commission.





# Sunshine Law

## General Principle:

- Florida's Government in the Sunshine Law, section 286.011, Florida Statutes, commonly referred to as the Sunshine Law, provides a right of access to governmental proceedings of public boards or commissions at both the state and local levels.

## Three Basic Requirements of Section 286.011, Florida Statutes:

1. Meetings of public boards or commissions must be open to the public;
2. Reasonable notice of such meetings must be given; and
3. Minutes of the meetings must be taken and promptly recorded.



# Sunshine Law and Accessibility

## Accessibility:

- Meetings must be open to the public, accessible to individuals with disabilities, and held at locations that are easy to reach and do not discriminate on the basis of sex, age, race, creed, color, origin, or economic status, or otherwise unreasonably restrict public access.
- Minutes of the meetings must be taken, promptly recorded, and open to public inspection.



# Sunshine Law Exemptions

- Exemptions must be provided for in law, and the law must specify the public necessity justifying the exemption.
- The exemption can not be broader than necessary to accomplish the stated purpose of the law.



# Sunshine Law Exemptions Specific to FDSTF

Section 288.985(2)(a), Florida Statutes, provides:

“Meetings or portions of meetings of the Florida Defense Support Task Force, or a workgroup of the task force, at which records are presented or discussed that are exempt under subsection (1) are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.”



# Penalties for Violating the Sunshine Law

## Criminal and Civil Penalties:

- Knowing violations of the Sunshine Law can result in 2<sup>nd</sup> degree misdemeanor charges with penalties up to 60 days in jail and up to a \$500 fine.
- Violations of the Sunshine Law that are NOT “knowing” violations are non-criminal and are punishable by a fine of up to \$500.
- Circuit Courts may issue injunctions to enforce the law.
- Reasonable attorney’s fees can be assessed against the Board for a Sunshine violation.



# Voting

- In accordance with section 288.987(3)(d), Florida Statutes, legislative members serving on the Task Force may participate in all Task Force activities but may only vote on matters that are advisory.
- The Secretary of FloridaCommerce, or his or her designee, serves as the ex officio, nonvoting executive director of the Task Force.
- A member who is present at a meeting may not abstain from voting unless there is or appears to be a possible conflict of interest under section 112.311, 112.313, or 112.3143, Florida Statutes, or additional or more stringent standards of conduct, if any, adopted pursuant to section 112.326, Florida Statutes.







# Voting Conflicts

- A Board member may not vote on any matter that the Board member knows would inure to his or her special private gain or loss.
- A Board member must disclose the nature of conflict by filing FORM 8A (Memorandum of Voting Conflict for State Officers) with person taking meeting minutes.
- FORM 8A should be filed before the vote at the meeting and incorporated into the meeting minutes.
- If it's not possible to file FORM 8A before the vote, then FORM 8A must be filed no later than 15 days after the vote with the person responsible for recording the minutes of the meeting.



# Contact Us

## Thank You.

If you have questions regarding Ethics or Sunshine, please contact the Office of General Counsel.



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# FLORIDA COMMERCE



## FLORIDA DEFENSE SUPPORT COMMISSION

### FDSC GRANT PROGRAM CRITERIA

Ray Collins

Office of Military and Defense

# FDSTF Grant Program History

- The FDSTF Grant Program began in 2013 as a non-statutory grant program under authority from F.S. 288.987
- From FY13-14 through FY24-25 the program has awarded approximately \$20.2m in Grants
- Until now, FDSTF & FDSC have followed DIG/DRG guidelines, but this has never been codified
- Intent now is to codify FDSC grant guidelines IAW F.S. 288.987(5)(b) as revised during the 2024 regular Florida Legislative Session



# Staff Proposed Initial Concept

- Continue to use DIG/DRG guidelines as basis from which to edit
- Incorporate flexibility for FDSC to expeditiously award grants to respond to emerging needs
- Continue discussion in March and implement decision for FY25-26 grant program



# Questions

