



## Florida's Sunshine, Public Records, and Ethics Laws

Presented by: Ben Gibson, General Counsel

# Enterprise Florida, Inc. (EFI)

- **288.901 Enterprise Florida, Inc.—**
- (1) CREATION.—(a) There is created a nonprofit corporation, to be known as “Enterprise Florida, Inc.,” which shall be registered, incorporated, organized, and operated in compliance with chapter 617, and **which is not a unit or entity of state government.**

# EFI Creation

- (b) The Legislature determines it is in the public interest and reflects the state's public policy that Enterprise Florida, Inc., operate in the most open and accessible manner consistent with its public purposes.

To this end, the Legislature specifically declares that **Enterprise Florida, Inc., and its divisions, boards, and advisory councils, or similar entities created or managed by Enterprise Florida, Inc., are subject to the provisions of chapter 119 relating to public records and those provisions of chapter 286 relating to public meetings and records.**

# Public Records

## Chapter 119, Florida Statutes.

- Definition of “public record” is very broad.
- Section 119.011(12), Fla. Stat.
  - “Public records” means 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.
  - Includes a private entity acting “on behalf of” public agency.
  - Used to perpetuate, communicate, or formalize knowledge.

# What is a Public Record?

- Essentially ANYTHING that relates to the official business of EFI:
  - Documents?
  - Emails?
  - Text Messages?
  - Facebook Messages?

Yes! If it relates to the official business of EFI.

*To determine if something is a public record look at the content of record NOT the form of communication!*

# Are there exemptions?

- Yes. Florida law provides that some public records are exempt or confidential and exempt from the public records laws.
  - Example: Social Security #'s, Certain Home Addresses, Certain Health information, etc.
- In order for something to be exempt- there must be a specific exemption in law.

# Exemptions Specific to EFI

- Plans, intentions, or interests of companies looking to locate, relocate, or expand business activities in Florida (must request and subject to time requirements)- (s. 288.075(2), F.S.)
- Trade secrets (288.075(3), F.S.).
- Proprietary confidential business information (288.075(4), F.S.).

# Who can request?

- Anyone.
- Requestor not required to show a “legitimate” or “noncommercial interest”
- Request cannot be denied because “overbroad.” Agency may charge for copies and reasonable service charge.
- Requests do not have to be in writing. Requestor does not have to disclose identity or reason for requesting.



# How long to keep records?

- Retention period depends on the content of the record not the form of the communication.
- Do NOT destroy or delete records without knowing the applicable retention period.

# Public Records Tips

- Use EFI devices not personal devices for communication.
- Do not respond to a public records request on your own. Contact EFI Communications if you receive a public records request.
- Assume that every record you create or receive related to your job is a public record.

# Sunshine Law

Section 286.011, Florida Statutes.

Florida's Sunshine Law in Article I section 24(b), Florida Constitution and Section 286.011, Florida Statutes provides a right of access to governmental proceedings of public boards or commissions at both the state and local levels.

Law is equally applicable to both elected and appointed boards. Applies to virtually every public board in Florida with exception of Legislature and Judiciary.

Applies to boards of EFI, Florida Sports Foundation, and Florida Defense Task Force including any subgroup of boards.

# Sunshine Law

- Three basic requirements:
  - Meetings must be **open** to the public.
  - Reasonable **notice** of meeting must be given.
  - Written **minutes** of meetings must be taken and recorded.

# Sunshine Law

- Applies to *any* gathering of two or more members of the same board to discuss some matter which will *foreseeably* come before that board for action.

# Sunshine Law

- Board members may not engage in private discussions with each other about board business, either in person or by telephone, emailing, texting, or any other type of communication (Facebook, blogs, etc.)

# Sunshine Law

- Does not apply to staff as long as acting in traditional staff role.
- However, staff cannot be used as a liaison to communicate information from one board member to another.

# Sunshine Law

- Exemptions must be in law and must be specific to Sunshine Law (public records exemption does not close a meeting).
- However, staff cannot be used as a liaison to communicate information from one board member to another.



# Ethics & Transparency

- EFI's President, Senior Managers, and Members of the Board of Directors are subject to certain provisions of Florida's Code of Ethics in Chapter, 112, part III.
- Florida law subjects all employees to other ethics provisions.
- In 2017, Legislature adopted numerous transparency requirements for EFI.

# Ethics

EFI President, EFI Senior Managers, EFI Board Members, EFI-Affiliated Board Members

- Prohibited from soliciting or accepting anything of value to influence official action;
- Prohibited from doing business with one's agency;
- Prohibited from accepting unauthorized compensation to influence vote or official action;

# Ethics

EFI President, EFI Senior Managers, EFI Board Members, EFI-Affiliated Board Members

- Prohibited from misusing position to secure benefit for self or others;
- Prohibited from entering into a conflicting employment or contractual relationship;
- Prohibited from disclosing or using info for personal or business gain;

# Ethics

EFI President, EFI Senior Managers, EFI Board Members, EFI-Affiliated Board Members

- Prohibited from serving simultaneously as officer and employee; and
- Subject to nepotism prohibitions.

# Voting Conflicts

- May NOT vote on any matter that the Board member **knows would inure to his or her special private gain or loss.**
- Must disclose the nature of conflict by filing FORM 8A- *Memorandum of Voting Conflict for State Officers* with person taking meeting minutes.
- Should file Form before vote, or if not possible, no later than 15 days after the vote.

# Voting Conflicts

- May vote on any matter that the Board member **knows would inure to his or her special private gain or loss of:**
  - Any principal by whom the Board member is retained;
  - Relative; or
  - Business Associate.
- Must disclose the nature of conflict by filing FORM 8A- *Memorandum of Voting Conflict for State Officers* with person taking meeting minutes.
- Should file Form before vote, or if not possible, no later than 15 days after the vote.

# Ethics

## EFI Board Members

- EFI Board Members must file Financial Disclosure Form 1 Statement of Financial Interests (if not already required to file Form 6- Full Disclosure);
- Filing Financial Disclosure makes Board members “Reporting Individuals” and also subject to:
  - Gift ban (s. 112.3148, F.S.);
  - Lobbying expenditure ban (s. 112.3215(6)(a), F.S.);
  - Prohibition on gifts from political committees (s. 112.31485, F.S.); and
  - Honorarium restrictions (s. 112.3149, F.S.).

# Other

- EFI may not endorse any candidate for any elected public office or contribute moneys to the campaign of any such candidate.
- EFI must comply with the per diem and travel expense provisions of section 112.061, F.S.



# Transparency Contracting

- EFI must submit all contracts with a total cost of \$750,000 or more for Legislative review. (s. 288.903(7), F.S.)
- All executed EFI contracts must be posted on EFI's website. (s. 288.904(6)(a), F.S.)

# Transparency Contracting

- All EFI contracts must contain:
  - Purpose of the contract;
  - Specific performance standards and responsibilities for each entity;
  - A detailed project or contract budget, if applicable;
  - The value of any services provided; and
  - The projected travel and entertainment expenses for employees and board members, if applicable.
  - (s. 288.904(6)(b), F.S.)

# Transparency & Ethics

- Florida law now requires transparency items to be posted on EFI's website. (s. 288.904(6)(d) & (e), F.S.)
- Lodging expenses may not exceed \$150/day, excluding taxes, unless participating in a group rate or at least three rates were acquired.

# Transparency & Ethics

- EFI funds may not be expended for food, beverages, lodging, entertainment, or gifts for EFI employees, EFI board members or employees of a tourist or economic development entity unless authorized pursuant to section 112.061, F.S. (state per diem law).
- An EFI employee or EFI board member may not accept or receive food, beverages, lodging, entertainment, or gifts from a tourist or economic development entity or from any person, vendor, or other entity, doing business with EFI unless such item is available to general public.



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