RUN THIS BY THE LEGAL DEPARTMENT, BUT RUN SUPER FAST SO THE ETHICS DEPARTMENT DOESN'T SEE IT.
Ethics for Public Officers
F.S. §§ 112.313, 112.3135, and 112.3143

State Ethics Code Highlights
The activities of the Coalition shall be governed by the Code of Ethics for Public Officers and Employees, as defined in Florida Statutes, §§ 112.313, 112.3135, and 112.3143.
You may not corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others.
Conflict of Interest Participation Limitations
Sec. 5.13, ELC Bylaws

No Member may participate or vote upon any measure which would inure to such Member's special private gain or loss (including a Member's relatives, as defined in Florida Statutes § 112.3143) or that of the principal whom such Member represents. All Members shall make known through verbal or written communication to the Coalition Members and the Chair all possible or apparent conflicts and refrain from voting and/or participating in actions to be taken on an item on which such Member has a conflict of interest.
Special Private Gain or Loss Defined as: “Substantial Financial Interest”
Sec. 5.6 ELC Bylaws

No Member or Member's relative or business entity shall have a substantial financial interest in the design or delivery of the Voluntary Pre-kindergarten Program or a coalition's school readiness program. As used in this paragraph, the term "relative" has the meaning ascribed in Florida Statutes § 112.3143, namely father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law. A Coalition Member, relative or business entity has a substantial financial interest in the Voluntary Pre-kindergarten Program or an early learning coalition's school readiness program, if 5.6.1 The Member, relative, or business entity, has direct or indirect ownership of more than 5 percent of the total assets or capital stock, cumulatively, of one or more of the proscribed sources listed in 5.6.2 below; or During the prior two years, more than 5 percent of the Member's, Member's relatives or Member's business entity's gross income was derived, cumulatively, from one or more of the proscribed sources listed in 5.6.2 below.
Prohibition on Doing Business With One’s Own Agency: F.S. Sec. 112.313(3)

No public officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency 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.
A public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in the agency in which the official is serving or over which the official exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual or if such appointment, employment, promotion, or advancement is made by a collegial body of which a relative of the individual is a member.

“Relative,” for purposes of this section only, with respect to a public official, means an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.
You may not vote upon any measure which would inure to your special private gain or loss or which you know would inure to the special private gain or loss of any principal by whom you are retained or to the parent organization or subsidiary of a corporate principal by which you are retained.

Or inures to the special private gain or loss of a relative or business associate.

The exception for entities defined as a state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; any public school, community college, or state university; or any special district.
Employment or Retainer: Public Entity Exception

You may vote on a matter that inures to the special private gain or loss of any principal by whom you are retained or to the parent organization or subsidiary of a corporate principal by which you are retained if that agency is any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; any public school, community college, or state university; or any special district.

You may wish to decline to vote in abundance of caution nonetheless.
You shall, prior to the vote being taken, publicly state to the assembly the nature of the officer’s interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.
Remember that it is a “Voting” and “Participation Prohibition”
F.S. Sec. 112.3143

For purposes of this subsection, the term “participate” means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer’s direction.
Prohibited Conflicting Employment
F.S. Sec. 112.313

You may not have any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he or she is an officer or employee.

You may not hold employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.
You may not solicit or accept anything of value, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the public officer, employee, local government attorney, or candidate would be influenced thereby.
Neither you nor spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such public officer, employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer, employee, or local government attorney was expected to participate in his or her official capacity.
Government in the Sunshine
F.S. Section 286.11
“It is a fundamental rule of their government that no conclusion can be made in anything that relates to the public till it has been first debated for three days in their Council. It is a capital crime for any to meet and discuss public business, unless it be either in their ordinary Council, or in the Council of the whole island.” Sir Thomas Moore, Utopia (1515)
The Scenario to be Avoided

“First of all, this meeting never happened”
Why does this apply to us?

• The Sunshine Law will apply to a private entity, whether not-for-profit or for-profit, if the entity is contracted to perform a public function that would otherwise be performed by government.

• In 2000, the Attorney General of Florida specifically considered whether the Government in the Sunshine Law applied to the Family Services Coalition, Inc., an entity contracted by DCF in District 4 to act as the management service organization for an alliance of residential providers who directly provide residential, clinical, and case management services for adolescents.

• The Coalition was a nonprofit agency governed by a thirteen-member board of directors.

• The Attorney General opined that that meetings of the board of directors of the Family Services Coalition, Inc., were subject to the Government in the Sunshine Law.
Basic Rules

- Reasonable notice must be provided to the public of all such meetings.
- Meetings/boards of state or municipal government or political subdivisions must be open to the public.
- No formal action of public boards shall be binding unless taken at such a meeting.
- Minutes of such meetings must be recorded promptly and shall be open to public inspection.
- No two members of the board may privately discuss board business.
Reasonable Notice & Agenda

The Sunshine Law requires that the body give the public reasonable notice of its meeting. Most agencies will post electronic notice of their meetings on the agency’s website, send out a press release, and will physically post notices at their main place of business in area generally designated for notices.

Notice is required of the meeting, not of the agenda, although most agencies will publish an agenda and this is the recommended practice.
Where to Meet?

- The meeting must be held in a location that allows for full public access, including access by the media.
- The meeting should thus conversely not be held in a location where the public has limited access and where there may be a “chilling” effect on the public’s willingness to attend by requiring the public to provide identification, to leave such identification while attending the meeting, and to request permission before entering the room where the meeting is held.
- If a large turnout is expected for a particular meeting, then the public board should take reasonable steps, such as moving the meeting to a larger room, to accommodate those who wish to attend.
Public Access to Meetings

Board meetings should be held in buildings that are open to the public and not at inaccessible locations such as private homes.

Avoid private lunches or dinners in public dining rooms prior to meetings.

The building cannot be locked or have restrictions that unduly impede public access, e.g., cannot be in a place requiring name or I.D. for access (AGO 2005-13)

Careful with out-of-town meetings.
Public Access & “Opportunity to be Heard”

• The Florida Sunshine Law not only requires boards to provide public access to their meetings but also mandates that “[m]embers of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission.”

• Public comments are required on the Board propositions, official decisions, and the Board is not required to provide “open access” commentary.

• The Board may set rules regarding length of public comments and rules for decorum. These should be posted as part of the Board agenda and on the entity website.
Out of town meetings

Out of town meetings are not *per se* prohibited but the courts may consider the:

- The need to have an out of town meeting vs. the public’s ability to attend;
- The distance from the board’s home location to the out of town site;
- What arrangements have been made to allow for public participation.
Electronic & Telephone Meetings

Online or electronic meetings are not permissible unless the public is provided with the means to access the meeting in a manner that would replicate public attendance.

A quorum physically present in one location is generally required.
The Sunshine Law requires that the Board keep written minutes of its meetings and that they be published and made available to public “promptly” or as soon as reasonable.

The minutes are not required to be verbatim transcripts but rather summary of the Board’s actions, although transcripts can serve as minutes.

You may record or videotape your meetings but must still provide written minutes.
“In order for there to be a violation of F.S. 286.011, a meeting between TWO OR MORE public officials must take place which violates the spirit, intent, and purpose. The obvious intent of the [Sunshine Law] was to cover any gathering of some of the members of a public board where members discuss some matters on which foreseeable action may be taken by the board.” (Emphasis added) *Hough v. Stembridge*, 278 So.2d 288 (Fla. 3rd DCA 1973)
One-Way, Two-Way, and Liaison Communications

- Two-way communications between any two or more members of a public board about board business are always prohibited. Includes oral, written and electronic communications.
- The Sunshine Law prohibits one-way oral communications between board members, i.e., where one party speaks and the second party does not respond. A one-way electronic or written communication by a board member is permissible if it is kept as a public record and there is no response to it from another board member except at a public meeting.
- It is not permissible to intentionally communicate to another board member through a third party.
Careful with telephone calls, any electronic device communications, or hard copy exchanges.

Private telephone conversations between board members to discuss matters which foreseeably will come before that board for action violate the Sunshine Law.

E-mail, text messages and hard copy exchanges about matters that will foreseeably come before the board for action violate the Sunshine Law.
Careful with “Community Meetings”

Two or more board members may be present and address the public provided that they are not purposely communicating with each other.

But Use Caution - Best Practice: Either advertise the gathering as a public session or leave the room while the other board member is speaking.
Stop Recording Me!

While boards may adopt reasonable rules and policies to ensure orderly conduct of meetings, the Sunshine Law does not allow boards to ban non-disruptive videotaping, tape recording, or photography at public meetings.
Folks are watching or recording – don’t speak quietly off-record.

The Sunshine Law is violated when a Board conducts “breakout sessions” where the members discussed committee business at two separate tables which meant that members at one table could not hear what was being discussed at the other table and members of the public could not hear what was being discussed at the sessions.

Also, watch human behavior to speak quietly to the member seated next to you during a meeting. It is prohibited if it is about Board business and presents troubling optics if you are observed or recorded even if it not about Board business.
How to Cure a Violation

The civil consequences of a violation, i.e., voiding the decision or nullifying the process *ab initio*, may be avoided if the board does not perfunctorily ratify or ceremoniously accept a tainted decision, but takes independent final action in the sunshine following a public discussion of any matters taken up privately. *Tolar v. School Board of Liberty County*, 398 So. 2d 427 (Fla. 1981)
Non-Criminal Violations

The Sunshine Law imposes noncriminal penalties for violations by providing that any public officer violating the provisions of the Sunshine Law is guilty of a noncriminal infraction, punishable by a fine not exceeding $500.

Reasonable attorney’s fees will be assessed against a Board or commission found to have violated the Sunshine Law.

Attorney’s fees may be assessed against the individual members of the Board except in those cases where the board sought, and took, the advice of its attorney.
Penal Sanctions

There are criminal sanctions including a term of imprisonment of up to 60 days and a fine of $500 for *knowingly* violating the Sunshine Law.

Mr. Sad Beans
Florida Public Records
Chapter 119, Florida Statutes
The Scenario to be Avoided

“Let’s never forget that the public’s desire for transparency has to be balanced by our need for concealment.”
Once Again, Why Us?

Florida’s Public Records Law, Ch. 119, F.S., provides a right of access to the records of the state and local governments as well as *to private entities acting on their behalf*.

While the mere act of contracting with a public agency is not sufficient to bring a private entity within the scope of the Public Records Act, there is a difference between a party contracting with a public body and a *contracting party which provides services in place of the public body agency*. 
What about our service providers?

The same analysis would apply to your subcontracted service providers. So, if both the subcontractor and contractor have been delegated a public function, then the subcontractor’s records relating to the delegated public function may also be public records subject to Florida’s Public Records Laws.

“[T]he Public Records Act cannot be so easily circumvented simply by the [main contracting agency] delegating its responsibilities to yet another private entity.”
“Public records” means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency, or private entity “acting on behalf” of a public agency, which are used to perpetuate, communicate, or formalize knowledge.
A city or agency is not obligated to data mine its paper or electronic archives and generate public records or compilations or reports that do not already exist.
Every person who has custody of a public record shall permit the records to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records or his designee.
What about drafts?

There is no “unfinished business” exception to the public inspection and copying requirements of Florida’s Public Records laws.

Inter-office memoranda and intra-office memoranda communicating information from one public employee to another or merely prepared for filing, even though not a part of an agency’s later, formal public product, would nonetheless constitute public records inasmuch as they supply the final evidence of knowledge obtained in connection with the transaction of official business.” *Shevin v. Byron Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d633 640 (Fla. 1980)
What about private device communications?

Whether the communication originates or is received by a private device (cell phone, computer, tablet) is irrelevant to the communication’s status as a public record.

Communications include e-mails and text exchanges on private telephones.
Like other public records, e-mail messages are subject to the statutory restrictions on destruction of public records and may only be destroyed or otherwise disposed of, only in accordance with retention schedules established by the Division of Library and Information Services of the Department of State.

The same rules that apply to e-mail should be considered for electronic communications including, SMS communications (text messaging), MMS communications (multimedia content), and instant messaging conducted by public agencies or Board members.
Exemptions to Disclosure

- All exemptions strictly construed.
- Active criminal investigative and intelligence records.
- Active commission on ethics and inspector general investigations.
- Active Whistleblower investigations.
- Social Security records.
- Bank/Credit/Debit account numbers.
- Personal information of specified categories of public officials and employees.
Charging of Fees

- 15 cents per one-sided copy

- 20 cents per two sided duplicated copy

- $1.00 per certified copy

- Reasonable special service charge for: extensive use of clerical or supervisory labor; or information technology resources based on actual cost incurred by agency.
Careful with Subcontractor Public Records

• Costs charged to requesters must be reasonable and so if a subcontractor is in possession of requested records, the private subcontractor must provide the records – for *reasonable* costs.
Business Specific Exceptions

- Adoption and birth records
- Autopsy and death records
- Child and vulnerable adult abuse and protection records
- Foster home, licensure and quality assurance records
- Guardians ad litem and court monitors
- Student records
- Hospital and medical records
- Patient and clinical records
- “Baker Act” reports prepared by law enforcement officers
- Juvenile offender records
“Exempt” vs. “Confidential”

There is a difference between records which the Legislature has designated as *exempt* from the Public Records Law and those which have been designated by the Legislature as *confidential*.

Exempt records are not subject to the mandatory disclosure requirements of the Public Records Law; an agency, however, is not prohibited from disclosing such records.

Confidential information is not subject to inspection by the public and may only be released to those persons and entities designated in the statute.
Process for Claiming Exemption

The custodian of the records bears the burden of showing that requested material meets the statutory requirements for exemption from public disclosure. This means that when the records custodian contends that “all or part of the record is exempt,” the custodian “shall state the basis of the exemption…including the statutory citation.”

Furthermore, if a records custodian asserts that an exemption applies to part of the record, then the custodian must “redact that portion of the record to which an exemption has been asserted and validity applies,” and produce the remaining record.

Finally, if the requesting person would like additional explanation for the exemption, then the records custodian is required to “state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.”

In other words, the agency or government entity has to explain why it denied access. Thus, whether information is ultimately exempt from disclosure or not, the agency must do more than simply cite the statute that it claims applies.
Careful with Confidential Information

Disclosure of confidential information is arguably a violation of the statute and could create liability for non-criminal or criminal penalties, if knowingly disclosed.
Penal and Civil Penalties

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

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

Mr. Arrojo
On behalf of the Commission on Ethics

Nelson C. Bellido, Esq., Chair
Dr. Judith Bernier, Vice Chair
Judge Lawrence A. Schwartz
Wifredo “Willie” Gort
Professor Charlton Copeland, Esq.

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Thank you for your invitation & your kind attention.