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SUNSHINE, PUBLIC RECORDS AND  
ETHICS CONSIDERATIONS FOR  
THE NORTHWEST FLORIDA  
TRANSPORTATION  
CORRIDOR AUTHORITY

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Nicholas A. Beninate  
Harrison, Sale, McCloy,  
Duncan & Jackson Chartered  
(850) 819-7484  
nbeninate@harrisonsale.com

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# Overview of Topics Covered:

- Sunshine Law Basics
  - Public Records Law Basics
  - Ethics Considerations
    - Gift Law
    - Prohibited Conflicts
    - Voting Conflicts
    - Potential Conflicts Related to Transportation Project Planning
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# Sunshine Law Basics

- Florida law ensuring that all meetings of a 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
  - Florida State Constitutional Basis: Article I, Section 24
  - Statutory Basis: Florida Statute 286.011
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# What is a meeting subject to the Sunshine Law?

- Any gathering, whether formal or casual, of two or more members of the same board to discuss some matter on which foreseeable action will be taken by the board
  - No exceptions for discussions between board members over telephone, e-mail, or other means
  - Discussions between a board member and staff, consultant, or a NFTA attorney are not sunshine meetings and, therefore, are allowed
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# Other Considerations Regarding Sunshine Meetings

- Not Allowed: Using staff member, consultant, or attorney as liaison between board members in order to communicate regarding matter which will foreseeably come before the board for action
  - Allowed: written report from one board member to the others regarding a subject that will be addressed at meeting so long as no response or interaction from other board members prior to public meeting
  - Board members may attend same functions, socialize, and discuss matters unrelated to the NFTCA but should always consider public perception when doing so. Avoid closed-door meetings with another board member regardless of circumstances.
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# Public Records Basics

- Florida laws ensuring every person has the right to inspect or copy almost any public record made or received in connection with the official business of the NFTCA
  - Florida State Constitutional Basis: Article I, Section 24
  - Statutory Basis: Chapter 119 of the Florida Statutes
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# What is a public record?

- By statute, public record 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.
  - Courts have interpreted this definition expansively: All materials made or received by NFTA in connection with official business, which are used to perpetuate, communicate or formalize knowledge.
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# Practical Considerations

- Most things you write or record regarding NFTA business are public records accessible to citizens, media, critics, political rivals, etc.
    - Be clear about context and meanings so that records will not be misconstrued later
    - Treat traditionally informal formats such as e-mail with full care and formality.
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# Special Considerations for NFTCA Board Members

- The board members do not have publicly provided office space, computers, etc. so public records and personal records are more likely to mix.
  - Try to keep documents that may be public records organized and separate from your personal and business materials. When in doubt, include a copy and later determine the public records status if necessary.
  - Computers: You may use your personal computer to assist you in your public business but you should segregate files, e-mails, etc. that may be public records into a designated folder. Only the materials on your computer that fit the definition of a “public record” become public.
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# Sunshine Law and Public Records

## Additional Information

- Government in the Sunshine Manual: published annually, compilation of the statutes, case law, Attorney General opinions and Commission on Ethics opinions organized by subject matter
  - Consult with NFTCA general counsel as needed.
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# Ethics Considerations

- Code of Ethics for Public Officers and Employees: Part III of Chapter 112 of the Florida Statutes
  - Chapter 838 of the Florida Statutes provides a handful of criminal offenses (primarily bribery; bid tampering; and falsifying, concealing, destroying official records with corrupt intent)
  - This presentation only addresses a few important issues rather than discussing all the topics covered by Chapter 112.
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# Gift Laws, the Basics

- The definition of gift is very inclusive. Items like food, drinks, transportation, admission fees, the use of real property or personal property, or a preferential rate or terms on a transaction are included.
  - Some of the laws are obvious since they address bribery type situations:
    - Public officers and employees 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. Florida Statute 112.313(2).
    - Public officers or employees 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. Florida Statute 112.313(4).
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# The less obvious laws: Lobbyists

- Gifts from political committees, committees of continuous existence and lobbyists:
    - Political committees and committees of continuous existence fall within scope of what people normally consider professional lobbyists
    - “Lobbyist” has broader definition: any person who, for compensation, seeks, or sought during the preceding 12 months, to influence the governmental decisionmaking of a the NFTCA or a board member, or sought during the preceding 12 months, to encourage the passage, defeat, or modification of any proposal or recommendation by the NFTCA or a board member
  - Cannot solicit any gifts from them
  - Cannot accept any gift from them worth over \$100
  - Gifts accepted from them valued \$25-\$100 will be reported by them to the Commission on Ethics
  - Same rules apply when gift is from their partners, firms, employers, or principals who retain them
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# The Least Obvious Laws: Other Gifts

- All gifts accepted worth over \$100 must be reported to the Commission on Ethics each quarter of the calendar year unless the gift is from a relative.
  - Relative is defined by Florida Statute 112.312(21). It is a fairly broad definition but might exclude some people that you would hold out as your relatives.
  - Gifts completely unrelated to your public duties are included in this requirement. For example, a birthday gift from your best friend must be reported if worth more than \$100.
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# Gifts, Practical Considerations

- If you choose to partially reimburse the person who gave you the gift, so that the value falls below the threshold reporting value, then you do not need to report it.
  - Lobbyists and similar persons referred to previously must report to the Commission on Ethics the gifts they give to public officials. Thus, the Commission on Ethics looks for inconsistencies between the reports.
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# Conflicts: Prohibited Conflicts versus Voting Conflicts

- Some matters are completely prohibited. If such a situation arises and cannot be avoided, the Board member must give up his position on the Board.
  - Other matters involving conflicts simply require that the Board member abstain from voting, disclose the voting conflict and file a memorandum of conflict with the Commission on Ethics prior to participating (any attempt to influence a decision) in the matter. Having a voting conflict does not mean you have done anything wrong so long as you properly disclose the conflict and abstain from voting.
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# Prohibited Conflicts

- **Conflicting Employment or Contractual Relationship, Florida Statute 112.313(7)**
    - You may not hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, the NFTCA
    - You may not have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between your private interests and the performance of your public duties or that would impede the full and faithful discharge of your public duties.
  
  - **Doing Business With One's Agency, Florida Statute 112.313(3)**
    - You may not (either directly or indirectly) purchase, rent, or lease any realty, goods, or services for the NFTCA from any business entity of which you, your spouse or your child is an officer, partner, director, or proprietor or in which you, your spouse or your child, or any combination of them, owns more than a 5% interest.
    - You may not rent, lease, or sell any realty, goods, or services to the NFTCA.
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# When does a voting conflict arise?

- Whenever a decision of the NFTCA would benefit or harm you or someone close to you, you might have a voting conflict:
    - any matter which would inure to your special private gain or loss
    - any matter 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
    - any matter which you know would inure to the special private gain or loss of a relative or business associate
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# Transportation Project Example:

- The NFTA is deciding whether to pursue a road project.
  - You own property along the location of the proposed road.
  - A road project next to your property would probably benefit you.
  - Does this mean the project would “inure to your special private gain?”
  - What should you do?
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# Transportation Project Example, cont.

- Do you have a voting conflict? Maybe.
    - Involves fact specific analysis, important factors:
      - Consider how many property owners will be affected.
      - Consider how much of your land will be affected compared to how much other land will be affected.
    - Clear Voting Conflict: You own half the land where the project would be located and the remainder of the land is owned by a few individuals.
    - No Voting Conflict: A new 50 mile long road would go past half an acre you own and there are hundreds of land owners where the road would be constructed.
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# Transportation Project Example, cont.

- What if you are somewhere in between?
  - Examples of real opinions by the Commission on Ethics:
    - Voting Conflict: project affects property owned by 40 different people. Government official owned 1.8% of the affected property and 2.7% of the affected street frontage
    - No Conflict: Government official and wife owned one of 83 lots affected (1.2%)
  - Do not hesitate to discuss with NFTA Counsel
  - When in doubt, disclose the possible conflict.
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# What to do if you have a voting conflict:

- Prior to the meeting during which the matter will be addressed, disclose the nature of the conflict in a written memo to be filed with the minutes of the meeting. This disclosure will be read publicly during the meeting.
  - Or
  - Disclose the conflict orally during the meeting when you become aware of it. Within 15 days, disclose the nature of the conflict in a written memo to be filed with the minutes of the meeting.
  - Once you have made the proper disclosure, choose whether you will participate in discussion but do not vote on the matter.
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