

Pinellas County License Board 2019 Board Training

By Colleen M. Flynn, Esq. ©2019
Johnson, Pope, Bokor, Ruppel & Burns, LLP

PCLB – Special District

PCLB is an Independent Special District

What is a Special District?

- Unit of local government created for a special purpose
- Has jurisdiction to operate within limited geographical boundary
- Created by general law, special act, local ordinance or by rule of the Governor and Cabinet
- Created by Special Act 61-2681 (has been amended over the years)



PCLB - Special District

- Notice Requirements – F.S. 189
 - Prepare and adopt a regular public meeting schedule quarterly, semiannually, or annually that includes the date, time and location of each scheduled meeting.
 - File a copy of the schedule with the special district's local governing authority.
 - Publish the schedule in the legal notices and classified advertisements section of the newspaper that meets the following criteria.
 - It is a newspaper of general or paid circulation in the county in which Special District is located;
 - It is a community newspaper of general interest and readership, as opposed to limited subject matter; and,
 - It is published at least 5 days a week unless the only newspaper in the county is published fewer than 5 days a week.



PCLB - Special District

- Notice Requirements – F.S. 189
 - The special district governing body must advertise the day, time, place and purpose of any meeting, other than a regular meeting or any recessed and reconvened meeting of the governing body, at least 7 days before such meeting. The advertisement must be published in the same way as the meeting schedule, unless a bona fide emergency exists.
 - If a bona fide emergency exists, reasonable notice must be provided. The government body must subsequently ratify the meeting. A special district may not approve its annual budget at an emergency meeting.



PCLB - Special District

- Website Requirements 189.069 – Special districts; required reporting of information; web-based public access. Each Special District must maintain an official website containing the following:
 - (1) The full name of the special district.
 - (2) The public purpose of the special district.
 - (3) The name, official address, official e-mail address, and if applicable, term and appointing authority for each member of the governing body of the special district.
 - (4) The fiscal year of the special district.
 - (5) The full text of the special district's charter, the date of establishment, the establishing entity, and the statute or statutes under which the special district operates, if different from the statute or statutes under which the special district was established.



PCLB- Special District

- (6) The mailing address, email address, telephone number, and website uniform resource locator of the special district.
- (7) A description of the boundaries or service area of, and the services provided by the special district.
- (8) A listing of all taxes, fees, assessments, or charges imposed and collected by the special district, including the rates or amounts for the fiscal year and the statutory authority for the levy the tax, fee, assessment or charge.
- (9) The primary contact information for the special district for purposes of communication from the department.
- (10) A copy of ethics adopted by the special district, if applicable, and a hyperlink to generally applicable ethics provisions.
- (11) The budget of the special district and any amendments thereto in accordance with 189.016.
- (12) The final, complete audit report for the most recent completed fiscal year and audit reports required by law or authorized by the governing body of the special district.



PCLB- Special District

- (13) A listing of its regularly scheduled public meetings as required by 189.015(1).
- (14) The public facilities report, if applicable.
- (15) The link to the Department of Financial Services' website as set forth in 218.32.
- At least 7 days before each meeting or workshop, the agenda of the event, along with any meeting materials available in an electronic format, excluding confidential and exempt information. The information must remain on the website for at least 1 year after the event.

*7 days means more than 168 hours per Jack Gaskins, Jr. from Special District Accountability Office



Government in the Sunshine

- F.S. 286.011
 - Meetings must be open to the public.
 - Reasonable notice of the meetings must be given.
 - Meeting must be held in a facility that does not restrict access or discriminate based on sex, age, race, creed, color, origin, or economic status.
 - Minutes of the meetings must be taken and promptly recorded.



Government in the Sunshine

- Covers 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.
 - Applies to all communications - oral, written, telephone, email, Facebook, twitter, instant messaging, text messaging
 - No one can serve as a liaison between board members to avoid sunshine law
 - Can we socialize with each other? Yes, provided matters that may come before the board are not discussed
 - Are there exceptions? Yes - but very narrow - security litigation, risk management, collective bargaining and then must follow strict rules



Government in the Sunshine

- Can I appear by phone?
 - Must have a quorum physically present
 - “...permissible when such absence is due to extraordinary circumstances such as illness ... whether the absence of a member due to a scheduling conflict constitutes such a circumstance is a determination that must be made in the good judgment of the board.” AGO03-41



Government in the Sunshine

- What happens if we violate the law? Must have a quorum physically present
 - Criminal Penalties: Anyone who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree. They may be sentenced to a term of imprisonment not to exceed 60 days and/or fined up to \$500 (F.S. 286.011(3)(b))
 - Removal from office
 - Non-criminal penalties: Fine up to \$500 for violation (F.S. 286.011(3)(a))
 - Civil action for injunctive relief



Government in the Sunshine

- Do we have to let public participate in our meetings?
YES!!!

- General public comment at meeting pertaining to anything at all!
- In addition, a 2013 law requires, subject to listed exemptions, that board provide a reasonable opportunity to be heard on a proposition before the board takes action. It does not have to occur at the same meeting at which the board takes official action if the opportunity occurs at a meeting that is during the decision-making process and is within reasonable proximity in time before the meeting at which the board takes official action.



Government in the Sunshine

- The 2013 law does not prohibit the board from “maintaining orderly conduct or proper decorum at a meeting.” Boards can adopt rules that limit the time a person has to address the board, provide procedures for allowing representatives of a group to address the board, and provide procedures or forms for an individual to use in order to inform the board of a desire to be heard, the position on the proposition and designation of a representative to speak for him or her.



Public Records Act F.S. 119

■ What is covered?

- Everything! All government records (unless confidential and exempt by law or exempt by law). Applies to all media - email, Facebook, Twitter, instant messaging. Notes for personal use to remember certain things do not fall within the definition of a public record. However, personal notes are public records if they are intended to communicate, perpetuate or formalize knowledge.



Public Records Act F.S. 119

■ What is not a public record?

- In addition to the notes discussed on the prior slide, the Florida Supreme Court has held that personal emails do not fall within the definition of public records subject to disclosure by virtue of their placement on a government owned computer system. Although a personnel file is a public record, certain info in there is exempt - social security numbers, retirement information, medical information etc.



Public Records Act F.S. 119

■ Exemptions from disclosure

- Although virtually all documents (as is broadly defined above) that PCLB has are public records, there are certain exemptions in the law that allow PCLB to not produce those records or redact the portion of the information that is exempt from disclosure.
- There are hundreds of exemptions from disclosure under Florida law. There is a difference in the law for information that is “exempt” from the Public Records Act and records which the law has deemed exempt from the Act and confidential. If information is confidential by law, the information is not subject to inspection by the public and may only be released to those persons and entities designated in the statute.



Public Records Act F.S. 119

■ Exemptions that might apply to PCLB

- Social Security numbers submitted by an applicant for a child care license are exempt per Florida Statute 402.308(a). (If the document itself is not exempt from disclosure then you would merely redact the social security number)
- Information relating to investigations and findings of child abuse, neglect, and abandonment allegations are confidential and exempt under Florida Statute 39.00145(2); 39.202; 30.2021; and 39.204. (Records which PCLB may obtain as part of an investigation or background check may NEVER be disclosed. PCLB is authorized by law to have a copy but MAY NOT REDISCLOSE WITHOUT A COURT ORDER. MAY NEVER DISCLOSE NAME OF REPORTER. DISCLOSING COULD RESULT IN CRIMINAL PENALTIES. DON'T GIVE IT OUT AND DON'T DISCUSS IT!)
- Personally identifiable health information/treatment records is protected under HIPAA. (If PCLB has medical records were they disclosed to PCLB through a HIPAA release or did a parent provide records pertaining to a child - personally identifying nature of records could be redacted for disclosure – look at these on a case by case basis.)



Public Records Act F.S. 119

■ Exemptions that might apply to PCLB

- Information regarding Level II background screening results is exempt under Florida Statute 435.09.
- Home address, telephone numbers, social security numbers, dates of birth, photos of law enforcement personnel. Firefighters, Judges, Guardian Ad Litem, Code Enforcement Officers, Juvenile probation officers, state's attorney, public defenders etc. and of their spouses and children is exempt. The location of their children's schools/day care is also exempt. (May apply if spouse of police officer wants to have a home day care - should get express permission if they want their information public.)
- Bank account numbers and debit, charge, and credit card numbers and social security numbers are exempt from disclosure per Florida Statute 119.071(5).



Public Records Act F.S. 119

■ Retaining/Producing documents

- Must be retained in accordance with time table set by law by Florida Department of State.
- Must respond to public records request – no required form of request, may not ask name, purpose, etc. Must produce all records unless legally exempt or confidential and exempt from disclosure.



Public Records Act F.S. 119

■ Penalties

- Civil Actions - attorney's fees and costs (typically for not responding to a public records request).
- Criminal penalties: 119.10(1)(b) a public officer who knowingly violates the provisions of 119.07(1) is subject to suspension and removal or impeachment and commits a misdemeanor of the first degree, punishable by possible criminal penalties of one year in prison or a \$1,000 fine.
- Non-criminal penalties: 119.10(1)(a) violation of 119 by a public officer is a non-criminal infraction, punishable by fine not exceeding \$500.



Ethics

All special district local officers and special district employees must comply with Florida's ethics laws (F.S. 112).



Ethics

- **Voting**

- 286.012 prohibits members present at a meeting from abstaining from voting in regard to any decisions, except where there is, or appears to be, a possible conflict of interest under 112.311, 112.313 or 112.3143. In that case, you must not vote and then must comply with the disclosure requirements of 112.3143.



Ethics

- What is a voting conflict?
 - 112.3143 the matter being voted on must insure the official's "special private gain or loss" or to the gain or loss of a principle by whom such official has been retained or to a relative or business associate. Appointed officers cannot participate in any matter that would inure to that officer's special private gain or loss. Participate means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.



Ethics

- What happens if there is a conflict?
 - An appointed public officer may not participate in the matter and must file a written memorandum reflecting such conflict prior to the meeting in which the matter is considered. The memorandum must be incorporated into the minutes of the meeting, must be provided to the other members of the board, and be read publicly at the next meeting held subsequent to the filing of the memorandum.



Ethics

- (cont.) If the conflict is unknown prior to the meeting, a disclosure has to be made orally at the meeting, a written memorandum has to be filed within 15 days, must become part of the minutes, must be distributed to the other members and read publicly at the next meeting.



Gift Law

- To be legal, must reasonably conclude that the gift was not given to the official to influence a vote or other action.
- What is a gift? Anything of value including a gift, loan, reward, promise of future employment, favor or service.
- You can accept a gift if (1) it is not a bribe based on an understanding that your vote or judgment would be influenced by the gift, and (2) if you reasonably know that it was not given to you to influence a vote or other action.
- THINK – WHY IS SOMEONE GIVING YOU A GIFT??????
Because of your position?????



Financial Disclosure

■ Form 1

- All independent special district local officers and specified employees must file this report even if no financial interests exist that require disclosure.
- File with the Supervisor of Elections in the County (also give copy to PCLB staff).
- Must be filed within 30 days of appointment and by July 1 ever year thereafter.
- Must disclose: primary sources of income, secondary sources of income, real estate owned, intangible personal property owned, liabilities greater than net worth or \$10,000, and interests in specified business.



Financial Disclosure

■ Form 1 (cont.)

■ Penalties

- Form is due July 1. Late if not filed by September 1.
- Automatic fines of \$25 per day for each late day up to a cap of \$1,500. Ethics Commission can hear appeals and has the power to waive fines under limited circumstances.
- Read instructions with the form and contact Commission on Ethics with questions. Failure to properly complete the form can result in a complaint. Penalties range from a public censure, reprimand, suspension, demotion, reduction in pay, or a civil penalty of up to \$10,000.
- If willful violation is found to have occurred, Commission will enter an order recommending that the officer or employee be removed from the position.



Financial Disclosure

- Form 1F
 - Must be filed if required to file Form 1.
 - Must be filed within 60 days of leaving their public office or employment position covering the period between January 1 and their last day of office or employment.



Appeal by Provider

■ Appeal Process

- When the License Board has reasonable cause to believe that grounds for the denial, suspension, or revocation of a license, the conversion of a license to probation status, or imposition of an administrative fine exist, it shall determine the matter in accordance with the procedures prescribed in F.S. 120 notify the applicant or licensee in writing, stating the grounds upon which the license is being denied, suspended, or revoked or converted to probationary status or an administrative fine is being imposed. If the applicant or licensee makes no written request for a hearing to the License Board within 15 days from receipt of such notice, the license shall be deemed denied, suspended, or revoked or the license shall be converted to probationary status or an administrative fine shall be imposed. (F.S. 402.310(2))



Appeal by Provider

■ Appeal Process

1. Notice of Imposition of Fine, Notice of Intent to Revoke, Notice of Intent to Suspend or convert to Probationary, or Notice of Intent to Deny Application is issued to a Provider or Applicant.
2. Provider/Applicant files a written Request for Hearing which must be received by PCLB within fifteen (15) calendar days of their receipt of the item in #1. (Failing to make a written request within fifteen day period is a voluntary waiver by the Provider/Applicant and after 15 days becomes final.)
3. Request for Hearing shall contain the following:
 1. A statement that the Provider/Applicant filing the Request for Hearing is entitled to an appeal;
 2. A brief statement of the action which is being appealed and the basis for the appeal; and,
 3. Specific request for relief.

The Provider/Applicant is limited to the issues raised in the Request for Hearing.



Appeal by Provider

■ Appeal Process

4. PCLB attorney schedules the hearing with the senior judge – per County Commission Resolution 08-174; PCLB pays senior judge.
5. Absent waiver by the party, hearing must be held within thirty (30) days of the Request for Hearing.
6. Hearing follows procedures set in F.S. Chapter 120.
7. If party does not appear at the hearing they waive the hearing and accept the decision of staff as final and agrees Hearing Officer may dismiss the appeal and submit a Recommended Order to that effect.
8. Otherwise, hearing proceeds and Hearing Officer issues Recommended Order including Findings of Fact and Conclusions of Law.
9. Either party aggrieved by the Recommended Order has the right to file exceptions to the Board within fifteen(15) days of their receipt of the Order; 10 days thereafter other party can file response to the exceptions.
10. PCLB considers the Recommended Order and any exceptions if filed and will hear argument in accordance with the rules and will take Final Agency Action which Chairman or Secretary signs.
11. Aggrieved party may file an appeal of Final Agency action with DCF within 15 days or it becomes final.



Any Questions?

Colleen M. Flynn, Esq.

colleenf@jpfirm.com

