



Thursday, May 23, 2024, 6:00 p.m.

GRU Administration Building

301 SE 4th Avenue

Gainesville, FL 32601

Authority Members

Ed Bielarski

Craig Carter

David Haslam

Eric Lawson

Robert Skinner

If you have a disability and need accommodation in order to participate in this meeting, please call (352) 334-5051 at least two business days in advance. TTY (Text Telephone Telecommunication Device) users please call 711 (Florida Relay Service). For Speech to Speech (STS) relay, please call 1-877-955-5334. For STS Spanish relay, please call 1-877-955-8773. For STS French Creole relay, please call 1-877-955-8707.

A. CALL TO ORDER

Agenda Statement: The Gainesville Regional Utilities Authority encourages civil public speech. The Gainesville Regional Utilities Authority expects each person entering this chamber to treat others with respect and courtesy. Speakers are expected to focus on agenda items under discussion. Signs, props, posters, food, and drinks should be left outside the auditorium.

B. ADMINISTRATIVE ITEMS

1. 2024-425 Oath of Office for Authority Members (B)

Department: Gainesville Regional Utilities, CEO/GM Office

Description: In accordance with Florida House Bill 1645, which became law on July 1, 2023, each member of the Gainesville Regional Utilities Authority will be given an oath

or affirmation by the Gainesville City Mayor or his designee, similar to the oath or affirmation required of a member of the City Commission.

Fiscal Note: None

Recommendation: The City of Gainesville Mayor or his designee administer an oath or affirmation to each Authority member individually.

2. 2024-426 Election of Officers (B)

Department: Gainesville Regional Utilities, CEO/GM Office

Description: In accordance with Florida House Bill 1645, which became law on July 1, 2023, the Authority members must elect a chair and vice-chair as their first act of official

business. To aid in making the election process efficient, each board member will

introduce themselves and give a short bio. The General Manager or his designee will then call for nominations from the members and guide

them through the election process.

Fiscal Note: None.

Recommendation: The General Manager or his designee assist the Authority members in electing a chair and vice-chair.

C. ADOPTION OF THE AGENDA

D. GENERAL PUBLIC COMMENT
(for items not on the agenda, not to exceed 30 minutes total)

E. CEO/GM COMMENTS

F. ATTORNEY COMMENTS

G. BUSINESS DISCUSSION ITEMS

- 1. **2024-427 Overview of Sunshine Law, Ethics and Public Records (B)**
Department: Gainesville Regional Utilities, CEO/GM Office

Description: Folds Walker will present an overview of the Sunshine Law, Ethics and Public Records to ensure the Gainesville Regional Utilities Authority is fully informed of

the laws of the State of Florida applicable to public meetings and public service.

Fiscal Note: None.

Recommendation: Hear a presentation from Folds Walker.

H. MEMBER COMMENT

I. ADJOURNMENT



**Gainesville Regional Utilities Authority
Agenda Item Report**

File Number: 2024-425

Agenda Date: May 23, 2024

Department: Gainesville Regional Utilities

Title: 2024-425 Oath of Office for Authority Members (B)

Department: Gainesville Regional Utilities, CEO/GM Office

Description: In accordance with Florida House Bill 1645, which became law on July 1, 2023, each member of the Gainesville Regional Utilities Authority will be given an oath or affirmation by the Gainesville City Mayor or his designee, similar to the oath or affirmation required of a member of the City Commission.

Fiscal Note: None

Recommendation: The City of Gainesville Mayor or his designee administer an oath or affirmation to each Authority member individually.

GRU Authority

May 23, 2024



“I do solemnly swear that I will support, honor, protect and defend the constitution and government of the United States and of the state of Florida, that I am duly qualified to hold office under the constitution of the state and under the charter of the city of Gainesville and that I will well and faithfully perform the duties of a member of the Gainesville Regional Utilities Authority upon which I am now about to enter, so help me God.”

Chair Election

Chair Responsibilities

- Preside over all meetings
- Preserve order and decorum
- Sign approved documents
- Discuss and vote on topics
- Set agenda topics and priorities with general manager

Restrictions

- Designate alternate to motion or second motion

Vice-Chair Responsibilities

- Carry out duties in Chair's absence

Voting Procedures

- Any member can nominate another member
- Members can nominate themselves
- Following a nomination, another member must second it
- Each nomination receives a vote
- A successful nomination requires three votes
- Vote for Vice-Chair follows same rules

Time and Place

- Meeting Frequency: First Wednesday, monthly
- Meeting Location: GRU Administration Multipurpose Room
- Meeting Time: 5:30 p.m.

Up Next

- Wednesday, May 29
- Main Topic: GRU's Fiscal Year 2025 Budget



**Gainesville Regional Utilities Authority
Agenda Item Report**

File Number: 2024-426

Agenda Date: May 23, 2024

Department: Gainesville Regional Utilities

Title: 2024-426 Election of Officers (NB)

Department: Gainesville Regional Utilities, CEO/GM Office

Description: In accordance with Florida House Bill 1645, which became law on July 1, 2023, the Authority members must elect a chair and vice-chair as their first act of official business. To aid in making the election process efficient, each board member will introduce themselves and give a short bio. The General Manager or his designee will then call for nominations from the members and guide them through the election process.

Fiscal Note: None.

Recommendation: The General Manager or his designee assist the Authority members in electing a chair and vice-chair.



**Gainesville Regional Utilities Authority
Agenda Item Report**

File Number: 2024-427

Agenda Date: May 23, 2024

Department: Gainesville Regional Utilities

Title: 2024-427 Overview of Sunshine Law, Ethics and Public Records (B)

Department: Gainesville Regional Utilities, CEO/GM Office

Description: Folds Walker will present an overview of the Sunshine Law, Ethics and Public Records to ensure the Gainesville Regional Utilities Authority is fully informed of the laws of the State of Florida applicable to public meetings and public service.

Fiscal Note: None.

Recommendation: Hear a presentation from Folds Walker.

ETHICS TRAINING

Presented by Folds Walker



ETHICS – THE BASIS

FOUNDATIONS OF ETHICAL REQUIREMENTS

- ❑ Florida Constitution [Section 8, Article II]
- ❑ The Code of Ethics for Public Officers and Employees [Florida Statutes 112, Part 3]
- ❑ Criminal Law [Florida Statutes 838 & 839]
- ❑ Common Law

RESOURCES FOR ANSWERS AND CLARIFICATIONS

- ❑ When in doubt, just ask!
- ❑ Call the Florida Commission on Ethics
 - ❑ 850-488-7864
 - ❑ Will also provide a written advisory opinion
- ❑ Folds Walker, LLC

WHAT IS THE COMMISSION ON ETHICS

- ❑ Issues advisory opinions, investigates complaints and recommends penalties when necessary
- ❑ In 2022, the Florida Commission on Ethics received 223 complaints
 - ❑ 65 of which were ordered to be investigated

Ethics Laws

- ❑ Prohibited actions or conduct
 - ❑ Misuse of public position
 - ❑ Disproportionate benefit
 - ❑ Willful failure to file
 - ❑ Voting conflicts/conflicts of interest
 - ❑ Solicitation or acceptance of gifts
 - ❑ Unauthorized compensation
 - ❑ Disclosure or use of certain information

MISUSE OF POSITION

- ❑ No public officer, employee of an agency, or local government attorney shall 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

Potential Penalties

- Impeachment or removal/suspension from office
- Termination/suspension of employment without pay
- Demotion/Reduction in Salary
- Forfeiture of up to 1/3 of annual salary
- Civil penalty up to \$10,000
- Restitution
- Public censure and reprimand
- Loss of retirement

MISUSE OF POSITION: NEPOTISM

- ❑ Public officials may not advocate for or appoint, employ, promote, or advance a relative in the agency in which the public official is serving

MISUSE OF POSITION: NEPOTISM

- “Relative” includes 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

Consequences:

Impeachment or dismissal/suspension from employment; removal/suspension from office; public censure and reprimand; forfeiture of percent of salary; civil penalty not to exceed \$10,000; restitution; demotion

VOTING CONFLICTS OF INTEREST

- A member of a board, commission, or agency who is present at a meeting at which an official decision, ruling, or other official act is to be taken or adopted may not abstain from voting unless there is, or appears to be, a possible conflict of interest

VOTING CONFLICTS OF INTEREST

- ...If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice

Voting Conflicts

Sec. 112.3143(3)(a) F-~~S~~No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s.112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer.

❑ Announce....disclose...abstain....file Form 8b within 15 days of the vote.

❑ Though no legal requirement to leave the room, best practice: Get off dais – don't participate

Voting Conflicts Test

- ❑ Special private gain or loss (Economic benefit or harm)
 - ❑ What is the size of the affected class?
 - ❑ Is the result remote and speculative?
 - ❑ Is this merely a preliminary or procedural matter?

GIFTS/UNAUTHORIZED COMPENSATION

- ❑ No public officer, employee of an agency, local government attorney, or candidate for nomination or election shall 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

DOING BUSINESS WITH ONE'S OWN AGENCY

- ❑ No employee of an agency acting in his or her official capacity as a purchasing agent, or 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.
- ❑ Exceptions: Competitive bidding, when business is transacted by a rotation system among qualified suppliers, emergency purchase, sole source within entity after disclosure.

INSIDE INFORMATION

- ❑ Current or former public officers, employees, or local government attorneys may not disclose or use information that is not available to the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity

SUNSHINE LAW

SUNSHINE LAW

- ❑ Fl. Stat, 286.011
- ❑ Florida Constitution Article I, Section 24
- ❑ ALL meetings in which official acts are taken or public business is transmitted are public meetings open to the public at ALL times.

WHY DO WE NEED THE SUNSHINE?

- Protect the public from “closed door” politics
- Provides the public with a right of access to government meetings and decision making
- Law ensures that deliberations and actions of boards and commissioners are conducted in public
- Provides a government more responsive to needs of citizens
- Florida is considered a leader in open government

WHAT IS REQUIRED?

- ❑ Reasonable notice
- ❑ Open to the public
- ❑ Promptly record minutes

WHAT IS REASONABLE NOTICE?

- ❑ Reasonable time
- ❑ Reasonable manner
- ❑ Location and time of meeting
- ❑ Which Board/Committee
- ❑ What is considered reasonable and timely depends on the circumstances

WHAT IS OPEN TO THE PUBLIC?

- Located within the city
- Fixed location
- No physical or psychological barriers
- Must be able to hear
- Public must be allowed to attend

TAKEAWAY

- ❑ ALWAYS ensure you have a time limit for public comment
 - ❑ Time limit must be content neutral
- ❑ Another approach, adjourn the meeting

SUNSHINE AND FIRST AMENDMENT RIGHTS

- ❑ Florida's Sunshine laws help ensure that citizens' first amendment rights are protected
- ❑ The public has the right to be present and to be heard (anti-sushing law)
- ❑ Public participation is not an absolute right and an entity can adopt reasonable rules to allow for order in public meetings

MINUTES

- ❑ Must be written
- ❑ Promptly recorded
- ❑ Votes, actions, and significant discussions

SCOPE OF THE SUNSHINE

- ❑ Applies equally to elected and appointed boards
- ❑ Applied to gatherings of two or more members of the same board to discuss some matter which will foreseeably come before that board for action
- ❑ Judiciary and legislature are not subject to Sunshine Law

WHAT IS A MEETING?

- ❑ Discussions of two or more members of same board/commission on some matter that foreseeably may come before that board/commission for action
 - ❑ Memorandum/letters
 - ❑ E-mail and text messages
 - ❑ Daisy chain
 - ❑ Discussions before/after meeting
 - ❑ Social Media Posts

- ❑ The Sunshine Law is broadly construed.
- ❑ Exemptions are narrowly construed.

EXCEPTIONS TO SUNSHINE LAW

- ❑ Collective Bargaining

 - ❑ Executive Sessions (not bargaining!)

- ❑ Litigation

 - ❑ Shade Meetings (must follow statutory requirements)

- ❑ Social Functions

 - ❑ No discussion of entity business!

FINCH V. SEMINOLE COUNTY SCHOOL BOARD

- ❑ Local school board took tour on a school bus of the neighborhoods for potential new schools
- ❑ Un-refuted evidence showed the members took precautions to avoid sunshine violations by sitting apart and not discussing the locations
- ❑ The 5th DCA found that:

The Board had ultimate decision-making authority; it was gathered together in a confined bus space; and it undoubtedly had the opportunity at that time to make decisions outside of the public's scrutiny. We conclude, therefore, that the conduct of the bus tour, indeed, constituted a violation of the Sunshine Law.

LINARES V. DISTRICT SCHOOL BOARD OF PASCO COUNTY 2018

- ❑ Boundary Committee violated Sunshine Law when members exchanged emails and conversations about committee business outside of public meetings.
- ❑ Even though Superintendent was a non-voting member, the Sunshine law applied to him because he was a part of the decision making process.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

- ❑ November 2018
- ❑ Inserted a lease agreement into the agenda the night before approving it
- ❑ Not a Sunshine violation because the law requires reasonable notice of the board's meetings, but no prohibition on the board taking action on items not included in the notice, or on the agenda

PENALTIES

- ❑ Removal from office
- ❑ Attorney's fees (for the challenging party as well)
- ❑ Second degree misdemeanor to knowingly violate the Sunshine Law
- ❑ Punishable with a fine of up to \$500.00 and or up to 60 days imprisonment

VALIDITY OF ACTION?

- ❑ No resolution, rule, regulation or formal action shall be considered binding except as taken or made at an open meeting
- ❑ Sunshine Law is construed by courts to frustrate all evasive devices (don't get cute or creative!)
- ❑ In some cases you can cure the violation through independent, final action within the sunshine (can't rubber stamp)
- ❑ Doesn't necessarily avoid liability for Commissioners

Public Records

PUBLIC RECORDS

☐ Florida Constitution Article I, Section 24(a)

“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..”

CONFIDENTIAL V. EXEMPT

- ❑ BOTH require statutory authorization
- ❑ An exempt record is one that the agency is neither required nor prohibited to disclose
- ❑ A confidential record is one that is not subject to inspection and that may not be released except to a person authorized by statute
- ❑ The entity bears the burden of proving the right to an exemption

EXEMPTIONS

- ❑ Only the Legislature may exempt records from public disclosure
- ❑ Exemptions are strictly construed
- ❑ An agency claiming an exemption from disclosure bears the burden of proving the right to an exemption

CONFIDENTIAL RECORDS

- ❑ EMS records that contain patient treatment information
- ❑ Social Security numbers
- ❑ Work papers related to the internal audit of the entity (prior to finality of audit)

NOTES

- ❑ Public employee (or official) notes to themselves do not fall into definition of public record
- ❑ However, they must be for their own personal use, and not intended to perpetuate, communicate or formalize knowledge
- ❑ If the notes are used to generate another document or distributed they are a public record

NOTES

- ❑ “public record” means “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type
- ❑ **NO UNFINISHED BUSINESS OR DRAFT EXCEPTION!**

SOCIAL MEDIA IS A PUBLIC RECORD

- ❑ Posts discussing a public issue is a public record and must be preserved.
- ❑ Might consider having public v. private account
- ❑ No deletions
- ❑ Send to your official email.

REMEMBER THE SUNSHINE!

- ❑ Board/commission members must not engage on social media in an exchange or discussion of any matter that might foreseeably come before the board/commission for action . . .
To engage in such an exchange is to violate the Sunshine Law

Social Media

- Social media posts can be considered public records depending on the content.
- Do not delete social media posts.
- Any violation could result in a fine not exceeding \$500.
- However, a knowing violation could result in suspension or termination and a first degree misdemeanor, punishable by up to one year in prison and/or \$1000 fine.
- Attorney's fees could be awarded to the complainant

TEXTS AS PUBLIC RECORDS

- ❑ It is best practice to have all public business communication through your official email.
- ❑ Text messages discussing public business is a public record and must be retained.
- ❑ It does not matter whether the texts are on your official device or personal device. Best practice is to use your official phone, but in the event someone contacts you on your personal phone, you should screenshot and send to your official device or email.

RECORDS RETENTION

- ❑ Retention is a requirement of law
- ❑ State has adopted a retention schedule
- ❑ Can be very specific

FORMATTING ISSUES

- ❑ An agency that maintains a public record in an electronic recordkeeping system must provide a copy of the record in the medium requested by the person, IF the agency maintains the record in that medium
- ❑ However, an agency is not required to reformat its records to meet a requestor's particular needs

FORMATTING ISSUES

- ❑ It is important to keep in mind the ADA regulations. IE, while re-formatting is not typically required, it is required to accommodate a person with disabilities (keeping in mind cost considerations and whether it is unduly burdensome on the entity)

PUBLIC RECORDS REQUESTS

- ❑ Not required to be in writing so long as it sufficiently describes the records being requested
- ❑ Requestor does not have to show a special interest or legitimate interest
- ❑ Requestor not required to provide their name or identifying information (except as expressly required by law)
- ❑ Unlimited amount of requests are allowed
 - ❑ However, no obligation to comply with subsequent public records requests until the fees for previously completed public records requests are paid. AGO Opinion 2005-28 and *Lozman v. City of Riviera Beach*
- ❑ Entity is not required to comply with standing requests (i.e. every month send me a utility bill from Joe's Crab Shack).

RESPONDING TO PUBLIC RECORDS REQUESTS

- ❑ The entity cannot impose conditions of inspection that act as a barrier
- ❑ A request for public record must be dealt with in timely manner (reasonable amount of time to respond)
- ❑ Must respond in good faith (reasonable efforts to obtain documents)
- ❑ Include acknowledgment of any circumstances that could cause a delay
- ❑ Cannot deny for “overbroad”, but can request more specificity
- ❑ Cannot deny on the grounds the records are also maintained by another agency
- ❑ Cannot deny on the grounds the records are not in the physical possession of the custodian

DENIAL OF REQUESTS

- ❑ If an agency denies a request, agency **MUST** state the basis for the exemption
- ❑ Must be in writing and with particularity (statutory citation)
- ❑ Cannot refuse to allow inspection/copying of an entire public record on the grounds that a portion of the record contains information which is exempt
- ❑ Custodian must redact only that portion of the record for which a valid exemption is asserted and provide the remainder of the record for inspection/copying

GENERAL RULES PUBLISHED BY FLORIDA LEAGUE OF CITIES:

1. If you think it might be wrong, it is
2. Don't get yourself into a situation that "tempts to dishonor."
3. Is there anyone who gives you something who doesn't want or expect something in return, except your mother? (And you can't be sure about her.)
4. People don't give elected officials or government employees gifts because they like them, but because they want something – at best, it is a sense of obligation
5. Can you accept a gift that does not influence you?